Christopher O'Connell *Legislative Service Commission*

Sub. H.B. 361*

125th General Assembly
(As Reported by S. Public Utilities)

Reps. Flowers, Niehaus, Olman, Reinhard, Faber, Seitz, Allen, Harwood, Martin, Daniels, Strahorn, Carmichael, Beatty, D. Evans, Hagan, Sferra, Sykes

BILL SUMMARY

- Establishes a service charge of 32¢ per month to be billed to each wireless telephone number in the state until December 31, 2008.

- Authorizes the proceeds of the charge (after covering capped state administrative costs) to be disbursed to counties based on the number of wireless service subscribers in the county, to pay for the subdivision equipment and staff training costs of public safety answering points providing wireless enhanced 9-1-1 (that is, automatic number identification and automatic location identification for wireless calls to a countywide 9-1-1 system).

- Beginning one year following the imposition of the charge, authorizes a subdivision that has paid its equipment and staff training costs and is providing wireless enhanced 9-1-1 to use the disbursements to pay for personnel costs of one or more public safety answering points providing that service.

- Authorizes any such disbursement received but not expended to be used, after the April 2009 disbursement, to pay for any wireless 9-1-1 public safety answering point costs, including personnel costs.

- Authorizes a wireline service provider to fund certain costs of updating or modernizing the wireline telephone network through the tax credit against the corporation franchise tax, to cover nonrecurring charges of the

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* *This analysis was prepared before the report of the Senate Public Utilities Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

wireline network in providing 9-1-1 service, but not costs related to wireless 9-1-1.

- Vests the Ohio 9-1-1 Coordinator in the Public Utilities Commission with authority to carry out the bill and creates an Ohio 9-1-1 Council and a Wireless 9-1-1 Advisory Board.

- Regarding immunity from civil liability currently provided to a telephone company and other specified entities and individuals in the event of injuries, death, or loss to persons or property arising from their participation in a 9-1-1 system, establishes an exception to this immunity in the case of willful or wanton misconduct on the part of the company, entity, or individual.

- Authorizes an individual to bring a civil action against a person who transmits a facsimile advertisement or causes it to be transmitted to the individual's residential premises without the individual's prior written permission, and in that action recover $1,000 for each violation.

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CONTENT AND OPERATION

In brief, the bill establishes a special, state-level funding mechanism for the specified costs of local public safety answering points (PSAPs) providing automatic number identification and automatic location identification capabilities for wireless calls made to 9-1-1 emergency telephone systems. The charge is to be collected by wireless service providers and resellers, remitted to the state, and disbursed on a monthly basis to counties. The counties in turn are required to distribute that money to the particular subdivisions that pay the cost of those PSAPs.

The Ohio 9-1-1 Coordinator and the Public Utilities Commission (PUCO) carry out administrative duties under the bill, and an Ohio 9-1-1 Council and a Wireless 9-1-1 Advisory Board are created for purposes relating to 9-1-1 service and the special funding mechanism.

BACKGROUND

General background on 9-1-1 service

9-1-1 service generally consists of two components: a local government component and a telecommunications component. The services rendered in the local government component generally consist of answering 9-1-1 emergency calls at a PSAP (a local government receiving point) and dispatching appropriate emergency services. The services rendered in the telecommunications component are the transmission and appropriate routing of a 9-1-1 call to the PSAP. Currently, with any 9-1-1 call made solely through a wireline telephone company, the PSAP has an automatic, electronic capability to identify the telephone number of the phone from which the call is made and, thus, to obtain identifying information, such as the associated address, that may be useful in locating the site of the emergency. With any 9-1-1 call made through a wireless telephone company, such as a cellular call, *most* PSAPs in Ohio do not have the capability to obtain any identifying information regarding the telephone number, and *no* PSAPs

have the ability to discern automatically with sufficient precision any location information; instead the PSAP must rely on the caller to supply the information.

In 1996, the Federal Communications Commission (FCC) issued an order and regulations requiring certain facilities-based wireless service providers to install the telecommunications component necessary to enable a PSAP to obtain telephone number identification (often referred to as "Phase I" automatic number identification (ANI) capability) and location information ("Phase II" automatic location identification (ALI) capability) for wireless 9-1-1 calls. The FCC has revised the original order several times, but the general requirement remains that all such wireless companies must install necessary technology pursuant to a schedule and standards the FCC has prescribed.[1]

The bill contains state law changes related to this federal initiative to institute Phase I and Phase II capabilities for PSAPs, including a change in funding sources for local governments.

General background on Ohio 9-1-1 law

9-1-1 service was initiated in Ohio pursuant to a body of law (R.C. 4931.40 to 4931.54 and 5727.39) that became effective in 1985, prior to the general

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[1] *Phase I, ANI capability (with an accompanying requirement that a PSAP be able to determine the location of the antenna that received the call, as a rough indicator of caller location) is required by FCC rule and order to be implemented by the later of April 1, 1998 or within six months of a request from a PSAP, but only if the administrator of a particular PSAP requests it and the PSAP is capable of receiving and using the data elements associated with the service.*

Phase II, ALI capability may be achieved by network-based location technology (such as a global positioning system) or by handset-based location technology. Network modification is required by October 1, 2001, but, as with ANI capability, also is subject to PSAP request and capability. For initial implementation under Phase II, the FCC permits a phase-in of new or upgraded handsets. Handset implementation must begin no later than October 1, 2001; by December 31, 2005, 95% of the subscribers to companies using a handset-based method must have location-capable handsets. Additionally, companies using a handset-based method must comply with the phase-in dates regardless of whether the PSAP has requested ALI capability. Handset-based ALI methods, which have a higher accuracy standard, may be used, alone or in combination with network-based methods. The FCC has granted to some carriers limited waivers of the Phase II requirements, subject to revised schedules and quarterly reporting.

The FCC required wireless carriers to report, by November 9, 2000, their plans for implementing Phase II ALI capability, including the technology they plan to use. (47 C.F.R. 20.18.)

availability of any telephone technology beyond traditional wireline technology. Under the 9-1-1 law, the decision to institute 9-1-1 service is a local one. Generally, 9-1-1 systems are established on a countywide basis, although a large municipal corporation or township under specific circumstances also may establish a 9-1-1 system within its boundaries (R.C. 4931.48). As of February, 2004, 9-1-1 service was available in 82 of Ohio's 88 counties. Factors generally affecting implementation of 9-1-1 service statewide are local jurisdictional issues and issues of funding for the local governmental component.

Under current law, 9-1-1 service not only is provided locally, but it also is funded locally. As explained in more detail below, current law gives local governments various funding mechanisms for 9-1-1. Additionally, current law provides two special mechanisms for wireline telephone companies to receive revenues to recoup their costs: use of a tax credit to cover their nonrecurring costs and a charge on telephone bills to cover their recurring costs. Current law provides no special mechanism by which wireless companies may receive revenues for any 9-1-1 costs they incur; wireless service is deemed a competitive service, and rates for that service generally are market-determined and are not government-regulated.

Current funding of PSAP costs

Currently, PSAPs receive and respond to both wireline and wireless 9-1-1 calls. Subdivisions fund PSAPs using existing sources of funding available to them.

Current law requires that the PSAP costs of providing 9-1-1 service be funded through local revenues of a subdivision.[2] A subdivision that operates a PSAP must pay all the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and 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, emergency service providers, and telephone companies participating in it are established in accordance with the 9-1-1 law. In addition, current law requires that each subdivision served by a PSAP must pay

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[2] *"Subdivision" is defined as a county, municipal corporation, township, township fire district, joint fire district, township police district, joint ambulance district, or joint emergency medical services 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. (R.C. 4931.40.)*

the subdivision operating the PSAP the amount computed in accordance with the allocation formula.

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 may be general operating funds of the subdivision or revenues the use of which is not otherwise prohibited. Other statutory sources of funding authority can be 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 (R.C. 5705.19(BB), not in the bill) and voter approval of a sales tax of 1/4 or 1/2 of 1% on retail sales in the county or an increase to 1/2 of 1% (R.C. 5739.026(A)(6), not in the bill).

The 9-1-1 law also authorizes two additional funding mechanisms relating to PSAP costs for a countywide system. 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 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. (R.C. 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. (R.C. 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 (R.C. 4931.53, not in the bill).

Aside from the above-described local, statutory funding mechanisms, certain counties in Ohio have been provided special funding to cover their equipment costs in initiating 9-1-1 service. That funding was provided pursuant to a decision by the PUCO in an ongoing complaint proceeding concerning adequacy

of telephone service. The funding is directed at enabling the statewide implementation of 9-1-1 service in Ohio.[3]

Current funding of wireline telephone company costs

Current law provides funding mechanisms for the recurring and nonrecurring charges for the wireline "telephone network portion" of a 9-1-1 system.

The funding mechanism for the recurring rates for the operation and maintenance of the telephone network is an amount imposed on each wireline residential and business customer access line, or its equivalent, within the area served by the particular 9-1-1 system. 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 PUCO must approve the amount billed. A company is prohibited from including the amount on a customer bill until its portion of the 9-1-1 telephone network is completed.

A company also may recover the nonrecurring charges for the 9-1-1 telephone network through a tax credit against its public utility excise tax liability or, imminently, its corporation franchise 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 the credit that may be taken each year, which is calculated by the Tax Commissioner, using a statutory formula indexed to inflation.

PROVISIONS OF THE BILL

General 9-1-1 provisions

(R.C. 4931.40, 4931.41, and 4931.45; Section 6)

As explained in more detail below, the bill creates an additional source of revenue for local 9-1-1 service: specifically, a special, state-level funding

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[3] *See* In the Matter of the Commission-Ordered Investigation of Ameritech Ohio Relative to its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4901:1-5, Ohio Administrative Code, *Case No. 99-938-TP-COI, Opinion and Order (July 12, 2001), Entry on Rehearing (September 5, 2001). The PUCO determined that Ameritech was liable for $3.65 million for violating the minimum standards, and for $2.82 million for improperly claiming waivers and not paying credits to its customers. It ordered the company to set aside the total liability of $6.47 million in a special fund and made Washington, Columbiana, and Monroe counties each eligible for a $400,000 payment from the fund, to cover their equipment costs in initiating 9-1-1 service.*

mechanism for "wireless enhanced 9-1-1," defined under the bill as a 9-1-1 system that is capable of providing the Phase I ANI and, to the extent available, Phase II ALI requirements of wireless 9-1-1 discussed in "***General background on 9-1-1 service***," above. Under the bill, this new "wireless 9-1-1 charge" expires December 31, 2008. As explained in "***Use of tax credit***," below, the bill also makes changes in the use of a corporation franchise tax credit for the purpose of funding wireline 9-1-1. These changes are made within the context of 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, and that "enhanced 9-1-1" means a system capable of providing both enhanced wireline 9-1-1 and wireless enhanced 9-1-1. The bill also authorizes service agreements between wireless service providers and subdivisions operating PSAPs for a countywide 9-1-1 system.

The bill adds several purposes for which a final 9-1-1 plan must be amended, including for the purpose of providing wireless enhanced 9-1-1 or adding a telephone company as a participant in a countywide 9-1-1 system after the implementation of wireline 9-1-1 or wireless enhanced 9-1-1, and it authorizes the convening of a 9-1-1 planning committee for purposes of adopting an amended final plan. 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 9-1-1 service implementation.

The bill also adds or amends several definitions and amends several provisions 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.

In particular, "wireless service provider" is defined under the bill as a facilities-based provider of wireless service to one or more end users in Ohio. "Wireless service" means federally licensed commercial mobile service as defined in federal law, and includes service provided by any wireless, two-way communications device, including a radio-telephone communications line used in cellular telephone service or personal communications service, a network radio access line, or any functional or competitive equivalent of such a radio-telephone communications or network radio access line. For purposes of the 9-1-1 law, however, such services do not include paging or other services that cannot be used to call 9-1-1.

"Wireline service provider" is defined as a facilities-based provider of wireline service to one or more end users in Ohio. "Wireline service" means basic local exchange service, as defined in existing Ohio alternative regulation law (R.C.

4927.01), that is transmitted by means of interconnected wires or cables by a wireline service provider authorized by the PUCO.

The definition of "telephone company" under the bill states that the term includes a wireline service provider and a wireless service provider unless otherwise expressly specified. However, for purposes of the statutes providing for a monthly charge to be imposed pursuant to county voter approval, it expressly means a wireline service provider.[4] The bill distinguishes the 9-1-1 service of each of the two types of providers by referring to the defined terms of "wireless 9-1-1" and "wireline 9-1-1."

The bill further expressly provides that it is subject to the referendum and effective on the 91st day after it is filed with the Secretary of State, or at the earliest time permitted by law if a referendum petition is filed.

New wireless 9-1-1 charge

(R.C. 4931.61)

The bill imposes a monthly charge on each wireless telephone number of a wireless service subscriber that has a billing address in Ohio, beginning on the first day of the third month following the bill's effective date and expiring on December 31, 2008. The amount imposed on each such telephone number is 32¢ per month.

The bill additionally provides that the wireless 9-1-1 charge is exempt from state or local taxation.

Ohio 9-1-1 Coordinator and two 9-1-1 funds

(R.C. 4931.40(I), 4931.60, 4931.63, and 4931.67)

The bill creates two funds into which portions of the periodic remittances of the wireless 9-1-1 charge must be credited: the Wireless 9-1-1 Administrative Fund and the Wireless 9-1-1 Government Assistance Fund. It also creates the 9-1-1 Service Program in the PUCO, to be headed by an Ohio 9-1-1 Coordinator in the unclassified civil service. The Coordinator administers the Government Assistance Fund and otherwise carries out duties under the bill. The PUCO Chairperson may establish additional duties based on a list of duties recommended by the Ohio 9-1-1 Council created by the bill (see "***Ohio 9-1-1 Council***," below). The Chairperson also may assign one or more PUCO employees to assist the Coordinator in carrying out duties under the bill.

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[4] *R.C. 4931.52 and 4931.53, not in the bill.*

The Coordinator is appointed by and serves at the pleasure of the PUCO Chairperson. An interim Coordinator must be appointed on the bill's effective date. In making final and subsequent appointments, the Chairperson must consider nominees proposed by the Council, but may request the Council to submit additional nominees and may reject any of the nominees. The Chairperson sets the compensation of the Coordinator and must evaluate the Coordinator's performance after considering the evaluation and recommendations of the Council.

The PUCO may adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to carry out the bill.

The Wireless 9-1-1 Government Assistance Fund is created as a custodial fund, in the custody of the Treasurer of State but not part of the state treasury (as such, it is not subject to appropriation by the General Assembly). The Treasurer must deposit or invest the moneys in this Fund in accordance with the Ohio Uniform Depository Act (R.C. Chapter 135.) and any other provision of law governing public moneys of the state. Any interest earned on the Fund must be credited to it. The Treasurer of State disburses money from the Fund solely upon order of the Coordinator, as authorized under the bill. Until the Fund is depleted, the Treasurer annually must certify to the Coordinator the amount of moneys belonging to the Fund.

Charge used to pay state administrative costs

(R.C. 4931.63(A))

The bill requires that a sufficient percentage, determined by the PUCO Chairperson but not to exceed 4% through the first full fiscal year and 2% thereafter, of the monthly remittances of the wireless 9-1-1 charge, be credited to the Wireless 9-1-1 Administrative Fund in the state treasury. These moneys must be used exclusively by the PUCO to cover its nonpayroll costs and, at the PUCO's discretion, its payroll costs that are incurred in assisting the Coordinator in carrying out the bill. The compensation and expenses of the Coordinator and PUCO auditing expenses regarding the charge also are paid from the Fund.

Charge used to pay PSAP costs

(R.C. 4931.41(A), (J), and (K), 4931.43(B)(1), 4931.45(A)(7), 4931.63(B), 4931.64, and 4931.65)

The remaining remittances of the wireless 9-1-1 charge (after the deposit to the Administrative Fund) must be deposited monthly into the Wireless 9-1-1 Government Assistance Fund. Not later than the last day of each month, the Ohio 9-1-1 Coordinator must disburse the amount credited to the Fund during the

second preceding month, plus any accrued interest required to be credited to the Fund.

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

The bill states that a countywide 9-1-1 system includes the county and any portion of a municipal corporation of the county that extends into an adjacent county. Generally as to a countywide system, the bill requires that the system of a county receiving a disbursement under the bill provide countywide wireless enhanced 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 for the purpose of paying either or both 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. Technical and operational standards of 9-1-1 systems established by the Ohio 9-1-1 Council, described below in "***Ohio 9-1-1 Council***," must be considered by a subdivision prior to incurring any of the above costs.

(2) Any costs of training staff of PSAPs to provide wireless enhanced 9-1-1, 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.

Beginning one year following the imposition of the wireless 9-1-1 charge, the bill authorizes a subdivision, in certain instances, to use a disbursement for the purpose of paying personnel costs of one or more PSAPs providing countywide wireless enhanced 9-1-1. To be eligible to use a disbursement as such, the subdivision must certify to the Ohio 9-1-1 Coordinator that it has paid the costs described in (1) and (2) above, and that it is providing countywide wireless enhanced 9-1-1.

Additionally, the bill authorizes a subdivision, after receiving its April 2009 disbursement, to use any remaining balance of disbursements it received to pay any of its costs of providing countywide wireless 9-1-1, including the personnel costs of one or more PSAPs providing that service.

The equipment, training, and other costs described 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 wireline or wireless enhanced 9-1-1 for the county.[5] For that purpose, the subdivision for which wireline or 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 subdivision must pay only so much of the costs associated with the PSAP as are specified in the agreement.

The bill also requires that, immediately upon its receipt of a disbursement, a county disburse the amount received to any other subdivisions in the county that pay the costs of any PSAP providing wireless enhanced 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. 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 basic or enhanced 9-1-1.

Generally, the amount disbursed by the Coordinator to each county must be a proportionate share of the balance of the Wireless 9-1-1 Government Assistance Fund, based on the ratio between (1) the number of wireless telephone numbers assigned to wireless service subscribers that have billing addresses within the respective countywide 9-1-1 system and (2) the total number of wireless telephone numbers assigned to subscribers that have billing addresses within the state. To the extent the Fund balance permits, a minimum annual disbursement of $25,000 is required for each county.

For the first three years of disbursements, the bill requires the Coordinator to set aside all disbursements to a county for which a final plan for countywide 9-1-1 has not been adopted (that is, to retain them, with interest earned, in the Wireless 9-1-1 Government Assistance Fund) and not disburse them to the county until the Coordinator is notified that a final plan has been adopted. But any moneys and interest so retained and not disbursed by the end of the third year must

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[5] *Under the bill, any final plan for the provision of wireless 9-1-1 must provide that any wireless 9-1-1 calls routed to a State Highway Patrol PSAP by default, due to a wireless service provider so routing all such calls without prior permission, are instead to be routed in accordance with the final plan. Upon adoption of the final plan, the bill requires the State Highway Patrol to cease operating as a PSAP unless the Patrol is operating as a PSAP pursuant to an agreement described above.*

be disbursed to each county for which a final plan has been adopted for countywide wireless enhanced 9-1-1 pursuant to the general formula described above.

For the purpose of making a disbursement to a county, the bill requires the Coordinator to do the following prior to the first disbursement under the bill and annually not later than January 25 thereafter until the Wireless 9-1-1 Government Assistance Fund is depleted: (1) determine, for each county that has adopted a final plan, the number of wireless telephone numbers assigned to wireless service subscribers that have billing addresses within the county,[6] (2) 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 under the bill, (3) estimate the ensuing fiscal year's Fund balance, (4) compute each county's estimated proceeds for the ensuing fiscal year based on their proportionate shares and the estimated Fund balance, and (5) certify that amount to the county auditor.

Collection of the wireless 9-1-1 charge

(R.C. 4931.61, 4931.62(A) and (B), and 4931.67)

The bill requires a wireless service subscriber to pay the wireless 9-1-1 charge, and the subscriber's wireless service provider, or the reseller of wireless service to the subscriber, must collect the charge from the subscriber as part of the provider's or reseller's monthly billing process and as a specific line item on the monthly bill, designated "State/Local Wireless-E911 Costs ($0.32/billed number)." A provider cannot place in that State/Local line item any charge or amount for wireless enhanced 9-1-1 costs that it may incur. If such a charge or amount appears on its own, separate line item, it must be designated "[Name of Provider] Federal Wireless-E911 Costs." For any subscriber of prepaid wireless service, the provider or reseller must collect the charge in any of the following manners:

(1) At the point of sale. The bill specifies that for purposes of prepaid wireless services, the point of sale includes the purchasing of additional minutes by the subscriber along with any necessary activation of those minutes.

(2) If the subscriber has a positive account balance on the last day of the month and has used the service during that month, by reducing the subscriber's

[6] *This number is to be adjusted between any two counties so that wireless subscribers with billing addresses within any portion of a municipal corporation that lies primarily in one of the two counties but extends into the other shall be considered a part of that primary county.*

account not later than the end of the first week of the following month by the amount of the charge or an equivalent number of air time minutes.

(3) By dividing the total earned prepaid wireless telephone revenues from sales within Ohio received by the wireless service provider or reseller during the month by 50, multiplying the quotient by $0.32, and remitting this amount.

The bill requires a wireless service provider or reseller of wireless services, beginning with the second month following the month in which the wireless 9-1-1 charge is first imposed, to pay to the Ohio 9-1-1 Coordinator the full amount of all wireless 9-1-1 charges it collected for the second preceding calendar month, with the exception of charges equivalent to the authorized billing and collection fee described below. The remittance must occur not later than the last day of each month. The provider or reseller may remit the requisite amount in any reasonable manner consistent with its existing operating or technological capabilities, such as by customer address, location associated with the wireless telephone number, or another allocation method based on comparable, relevant data. If the provider or reseller receives a partial payment for a bill from the subscriber, the provider or reseller must apply it first against the amount the subscriber owes the provider or reseller and must remit the remainder, if any, to the Coordinator.

Under the bill, a provider or reseller may retain as a billing and collection fee 2% of the total wireless 9-1-1 charges it collects in any month. The provider or reseller must account to the Coordinator for the amount retained. The PUCO must adopt rules prescribing the necessary accounting for this fee.

The bill states that each subscriber on which a wireless 9-1-1 charge is imposed is liable to the state for the amount of the charge. If a provider or reseller fails to bill or collect the charge, the provider or reseller is liable for the amount not billed or collected. If a provider or reseller collects and fails to remit a charge, the provider or reseller is liable to the state for any amount collected and not remitted.

Auditing of remittances

(R.C. 4931.62(C))

The bill provides for the PUCO to audit wireless 9-1-1 charge remittances. Additionally, upon written notice to the wireless service provider or reseller, the PUCO, by order after completion of such an audit, may make an assessment against the provider or reseller if the PUCO determines that the provider or reseller has failed to bill, collect, or remit the wireless 9-1-1 charge as required by the bill or has retained more than the amount authorized as a billing and collection fee. The audit may be conducted if the PUCO has reason to believe such an infraction has occurred. The audit may be of a sample of the provider's or reseller's

billings, collections, remittances, or retentions for a representative period. The PUCO must make a good faith effort to reach agreement with the provider or reseller in selecting that sample.

The assessment imposed on the provider or reseller must be in the amount of any remittance that was due and unpaid on the date notice of the audit was sent by the PUCO to the provider or reseller or, as applicable, in the amount of the excess billing and collection fees retained by the provider or reseller as of that date. The bill states that an assessment by the PUCO does not discharge a subscriber's liability to reimburse the provider or reseller for the wireless 9-1-1 charge. If, after the date of service of the PUCO audit notice to the provider or reseller, a subscriber pays a wireless 9-1-1 charge for the period covered by the assessment, the payment must be credited against the assessment.

An assessment is final and due and payable and must be remitted to the PUCO unless the assessed party petitions for rehearing under continuing public utility law (R.C. 4903.10). Such a proceeding is subject to and governed by continuing law (R.C. Chapter 4903.), except that the Franklin County Court of Appeals has exclusive, original jurisdiction to review, modify, or vacate an assessment order of the PUCO. The Court must hear and determine such appeal in the same manner and under the same standards as the Ohio Supreme Court hears and determines appeals under public utility law (R.C. Chapter 4903.).

The judgment of the Court of Appeals is final and conclusive unless reversed, vacated, or modified on appeal. Such an appeal may be made by the PUCO or the person to whom the assessment order was issued and must proceed as if an appeal in a civil action as provided in continuing law (R.C. Chapter 2505.).

If any portion of an assessment remains unpaid after it becomes final, including accrued interest, a certified copy of the PUCO's entry making the assessment final may be filed in the office of the Clerk of the Court of Common Pleas in the county in which the place of business of the assessed party is located. If the party maintains no place of business in Ohio, the certified copy of the entry may be filed in the office of the Clerk of the Court of Common Pleas of Franklin County. Immediately upon the filing, the Clerk must enter a judgment for the state against the assessed party in the amount shown on the entry. The judgment may be filed by the Clerk in a loose-leaf book entitled "Special Judgments for Wireless 9-1-1 Charges" and has the same effect as other judgments. The judgment must be executed upon the request of the PUCO.

The portion of any assessment not paid within 60 days after the date of service by the PUCO of the assessment notice bears interest from that date until paid, at the "federal short-term rate." That rate, as determined by the Tax

Commissioner for purposes of tax law, is the rate of the average market yield on outstanding, marketable U.S. obligations with remaining periods to maturity of three years or less, as determined under the Internal Revenue Code for July of the current year (R.C. 5703.47). Such interest may be collected by making a further assessment.

An assessment and any interest due must be remitted in the same manner as the wireless 9-1-1 charge. All assessments and interest collected by the PUCO must be paid to the State Treasurer, for deposit to the credit of the Wireless 9-1-1 Government Assistance Fund.

Coordinator recommendation on the wireless 9-1-1 charge

(R.C. 4931.67 and 4931.70)

The bill requires PUCO rules to establish a fair and reasonable process for recommending the amount of the wireless 9-1-1 charge to the General Assembly. On November 1, 2006 (preceding the 2007-2009 budget biennium), the Ohio 9-1-1 Coordinator must submit a report to the General Assembly that contains a recommendation as to the amount of the charge for that biennium and the basis for the recommendation. Under the bill, the wireless 9-1-1 charge may be prescribed only by an act of the General Assembly.

The recommended amount must reflect the minimum amount necessary during the biennium (1) to fully cover the PSAP costs, described in "***Charge used to pay PSAP costs***," above, as projected for that biennium and (2) to cover the PUCO's payroll and nonpayroll administrative costs, as described in "***Charge used to pay state administrative costs***," above, for the biennium.

In making a recommendation on the amount of the wireless 9-1-1 charge, the Coordinator must consider any recommendation of the Wireless 9-1-1 Advisory Board.

The Coordinator's report also must contain a review of the implementation and provision of wireless enhanced 9-1-1 in Ohio and a description of how moneys disbursed for wireless enhanced 9-1-1 have been used. In preparing this portion of the report, the Coordinator must again consult with the Wireless 9-1-1 Advisory Board.

Ohio 9-1-1 Council

Composition

(R.C. 4931.68(A))

The bill creates the Ohio 9-1-1 Council, consisting of 11 members as follows: the Ohio 9-1-1 Coordinator; a designee of the Department of Public Safety, selected by the Director of Public Safety; 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 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 Telecom Association and the Wireless Operators of Ohio (or any successor of any of the above-named organizations).

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.

Duties

(R.C. 4931.68(C), (D), and (E))

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

(1) Arbitrating and establishing relative to 9-1-1 systems in Ohio nondiscriminatory, competitively neutral, and uniform technical and operational standards consistent with recognized industry standards and federal law. The bill states that this authority does not include authority to prescribe the technology that a telephone company or reseller uses to deliver 9-1-1 calls.

(2) Conducting research and making recommendations or reports, including for the purpose of the Coordinator reporting to the General Assembly, regarding wireline and wireless 9-1-1 issues, any improvements in the provision of service by 9-1-1 systems in Ohio, or any legislation or policies concerning such systems; and

(3) Regarding the position of Ohio 9-1-1 Coordinator, submitting names of nominees and recommended duties and, at least biennially, conducting and submitting with recommendations to the PUCO a performance evaluation of the Coordinator.

The Council must select a chairperson from among its appointed members. Each member has one vote in all deliberations, except that the Coordinator cannot vote on (3) above. A majority of the voting members constitutes a quorum.

The bill additionally states that the Council is not an agency for purposes of Ohio statutes governing the sunsetting of state agencies.

Conditions of service

(R.C. 4931.68(B))

Appointed members of the Council serve without compensation and are not 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 January 31, 2007. The terms of the initial appointee representing 9-1-1 administrators, another representing wireline service providers, and another representing wireless service providers expire January 31, 2008. The term of the initial appointee representing countywide 9-1-1 systems and the terms of the remaining, initial wireline service provider and wireless service provider representatives expire January 31, 2009. 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.

Wireless 9-1-1 Advisory Board

Composition

(R.C. 4931.69(A))

The bill creates the Wireless 9-1-1 Advisory Board, consisting of (1) the Ohio 9-1-1 Council appointee that represents public safety communication officials and (2) five members appointed by the Governor as follows: one of the Council appointees that represents wireless service providers, whose Council term expires after the Council term of the Council appointee representing public safety communications officials; one noncouncil representative of wireless service providers; one noncouncil representative of public safety communications officials; and two noncouncil representatives of municipal and county governments.

Duties

(R.C. 4931.69(C), (D), and (E))

The duties of the Advisory Board consist of (1) making a recommendation to the Coordinator regarding the amount of the wireless 9-1-1 charge, to be included by the Coordinator in the required report to the General Assembly, and consulting with the Coordinator regarding the report, and (2) making recommendations to and consulting with the PUCO and the Coordinator regarding any rules to be adopted by the PUCO to carry out the bill.

The Coordinator appoints the chairperson of the Advisory Board. Each board member is a voting member and has one vote in all deliberations. A majority of the members constitutes a quorum.

The bill provides that the Advisory Board is not an agency for purposes of statutory provisions governing the sunsetting of state agencies.

Conditions of service

(R.C. 4931.69(B))

The terms of office of Advisory Board members who are also Ohio 9-1-1 Council members are concurrent with their terms as appointed members of the Council. Terms of the initial noncouncil appointee who represents wireless service providers and of one of the initial noncouncil appointees who represents municipal and county government expires on January 31, 2009. Terms of the initial noncouncil appointee that represents public safety communications officials and of the other initial noncouncil appointee that represents municipal and county

government expires on January 31, 2010. Subsequent terms of the noncouncil appointees shall be for three years, with each term ending on the same day of the same month as the term it succeeds.

The conditions of holding office, manner of filling vacancies, and other matters concerning service by an Advisory Board member are the same as set forth for Council members under the bill.

Information requirements

(R.C. 4931.66 and 4931.99(E))

The bill requires a wireless service provider, the State Highway Patrol when it functions as a PSAP under the bill, and each subdivision operating one or more PSAPs for a countywide system providing wireless 9-1-1, to provide the Ohio 9-1-1 Coordinator with such information as the Coordinator requests for the purposes of carrying out the Coordinator's duties under the bill, including duties regarding the collection of the wireless 9-1-1 charge and the provision of the biennial report to the General Assembly.

A wireless service provider also must provide an official, employee, agent, or representative of a subdivision or the State Highway Patrol operating a PSAP with such technical, service, and location information as requested for the purpose of providing wireless 9-1-1.

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 or recommendation to the Coordinator under the bill.

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

The bill prohibits the PUCO, the Coordinator, and any official, employee, agent, or representative of the PUCO, of the State Highway Patrol, or of a subdivision operating a PSAP, while acting or claiming to act in the capacity of the PUCO, Coordinator, or such official, employee, agent, or representative, from disclosing any 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, or the Coordinator'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. A violation of the disclosure prohibition is a fourth degree misdemeanor on a first offense, and a fifth degree felony on each subsequent offense.

Use of a tax credit

(R.C. 4931.45(B), 4931.47, and 5733.55)

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 tax credit in the amount of the charges set forth in the rate schedule (tariff) the company must file under the Ohio public utility law. Pursuant to a recent change in Ohio tax law, beginning in 2005 the credit will be taken against corporation franchise tax liability instead of the former public utility excise tax liability. The bill specifies that the tax credit is available to a telephone company that is a wireline service provider.

Continuing law authorizes this funding mechanism when a final plan is amended to expand the territory that receives 9-1-1 service or to upgrade a 9-1-1 system from basic to enhanced 9-1-1. The bill adds one other circumstance: when a final plan is amended to add a telephone company as a participant in a countywide 9-1-1 system after implementation of wireline 9-1-1 or wireless enhanced 9-1-1.

Additionally, the bill authorizes such funding for the total nonrecurring charges for a telephone company's portion of the wireline telephone network of the system and the total nonrecurring charges for any updating or modernization of that 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 receipt of permissible charges can occur only upon the completion of the network installation or the updating or modernization. The bill specifies that the company's charges for the portion, updating, or modernization of the wireline telephone network may not represent or include the provision of wireless 9-1-1.

Immunity from civil liability

(R.C. 4931.49)

Continuing law provides immunity from civil liability to the state, the State Highway Patrol, a subdivision participating in a 9-1-1 system, 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. The bill extends this immunity to any independent contractor of the state, the Highway Patrol, or a participating subdivision.

The bill provides immunity from civil liability to the Ohio 9-1-1 Council, the Wireless 9-1-1 Advisory Board, and any Council or Board 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.

Current law also provides immunity from civil liability to telephone companies, and any other installer, maintainer, or provider, through the sale or otherwise, of customer premises equipment, and their respective officers, directors, employees, agents, and suppliers in the event of injuries, death, or loss to persons or property arising from the entity's or the entity's officers', directors', employees', agents', or suppliers' participation in, or acts or omissions in connection with that participation in, a 9-1-1 system. The bill provides an exception to this immunity in the case of willful or wanton misconduct on the part of the entity or the entity's officers, directors, employees, agents, or suppliers.

9-1-1 criminal penalties

(R.C. 2913.01(E), 4931.49(D), (E), and (F), and 4931.99(A) and (E))

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. A violation is a fourth degree misdemeanor.

The bill also prohibits a person from knowingly using a 9-1-1 system for a purpose other than obtaining emergency service. A violation is punishable as a fourth degree misdemeanor on the first offense and a fifth degree felony on each subsequent offense.

The bill adds the following to the current list of purposes or circumstances under which it is permissible to disclose or use information concerning telephone numbers, addresses, or names obtained from a 9-1-1 data base serving a PSAP: (1) for the purpose of responding to an emergency call to an emergency service provider, and (2) 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-specific answering lines at a PSAP.

Enforcement of 9-1-1 obligations

(R.C. 4931.50)

Under current law, the Attorney General, upon the PUCO's request or the Attorney General's own initiative, must begin proceedings against a telephone company to enforce compliance with the 9-1-1 law or with the terms, conditions, requirements, or specifications of a final plan or an agreement to provide 9-1-1 service within a large municipal corporation or township. The bill specifies that this authority may be exercised against a telephone company that is a wireline service provider as to wireline or wireless 9-1-1.

Additionally, 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. 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.

Exemption from competitive bidding

(R.C. 4931.41(F))

Under current law, the purchase, installation, or maintenance of customer premises equipment at a PSAP made in compliance with a final plan is not subject to competitive bidding requirements. The bill includes customer premises equipment used to provide wireless enhanced 9-1-1 service in this exemption.

Facsimile Advertising Law residential modification

(R.C. 4931.75)

The Facsimile Advertising Law prohibits a person from transmitting an advertisement to a facsimile device unless the person has received prior permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement. Prior permission is not required if the person has a pre-existing business relationship with the owner or lessee. Any person that violates this prohibition is guilty of a minor misdemeanor for a first offense and first degree misdemeanor on each subsequent offense.

The bill provides that the above prohibition does not apply to a person who transmits an advertisement to a facsimile device located on residential premises.

Instead, the bill provides that no person may transmit an advertisement to a facsimile device located on residential premises unless the person has received prior *written* permission from the owner or, if the device is leased, from the lessee of the device to which the message is to be sent to transmit the advertisement. The recipient of an advertisement transmitted in violation of this prohibition may bring a civil action against the person who transmitted the advertisement or caused it to be transmitted and recover $1,000 for each violation. In addition, the criminal penalty described above continues to apply for a violation of the prohibition.

Theft Law and Email Advertising Law

(R.C. 2307.64, 2913.01, and 4931.40(F))

The bill changes the definition of "services" for purposes of Ohio Theft and Fraud Law (R.C. Chapter 2913.). Currently, "services" expressly includes, among other services, "public utility services." The bill adds language specifying that public utility services include wireless service as defined in the 9-1-1 law (see "***General 9-1-1 provisions***," above). The only change to the Email Advertising Law is a change in a Revised Code cross reference to reflect the new number (R.C. 4931.75) given a section under the bill.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	12-30-03	p.	1345
Reported, H. Public Utilities	05-05-04	p.	1834
Passed House (77-20)	05-12-04	pp.	1907-1908
Reported, S. Public Utilities	---		---

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