



S.B. 211

125th General Assembly
(As Introduced)

Sen. Schuler

BILL SUMMARY

- Imposes a monthly service charge of 65¢ per month billed to each wireless telephone number in the state.
- Authorizes one-half of the proceeds of the charge (after covering capped state administrative costs) to be disbursed to facilities-based wireless service providers to reimburse them for their costs in 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).
- Authorizes disbursement to counties of the remainder of the proceeds, based on the number of wireless service subscribers in the county, to pay for subdivision costs in equipping and staffing public safety answering points to provide wireless enhanced 9-1-1.
- Authorizes a wireline service provider to fund certain costs of updating the wireline telephone network through a credit against the public utility excise tax or, beginning in 2005, the corporation franchise tax, to cover nonrecurring charges of the wireline network in providing 9-1-1 service, including 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.

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CONTENT AND OPERATION

In brief, the bill addresses wireless 9-1-1 service in two respects: (1) it provides a special funding mechanism for reimbursing facilities-based wireless service providers for their costs in providing wireless enhanced 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 enhanced 9-1-1 staffing, staff training, and equipment costs of public safety answering points (PSAPs).



The funding mechanism is a monthly charge billed to each wireless telephone number in the state, the proceeds of which are distributed generally to counties, based on the number of wireless service subscribers in the county, and to wireless service providers, based on costs.

The bill also expands the use of an expiring excise tax credit mechanism and its replacement corporation franchise tax credit to fund certain costs of a wireline service provider in providing 9-1-1 service.

The Ohio 9-1-1 Coordinator and the Public Utilities Commission (PUCO) are given certain duties to carry out 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 at a local government receiving point, called a public safety answering point (PSAP), 9-1-1 emergency calls 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 also 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 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 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.

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.)

Under current law, 9-1-1 service not only is provided locally, but, for the most part, 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 an excise 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 and emergency service providers 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 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 may be earmarked for 9-1-1 systems or PSAP costs. These include voter approval of a tax

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.)

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

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

Current funding of 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. 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.

As noted previously, current law provides no funding mechanism for the 9-1-1 costs of a wireless service provider. Wireless service is deemed a competitive service, and rates for that service generally are market-determined and are not government-regulated.

PROVISIONS OF THE BILL

General service provisions

(R.C. 4931.40, 4931.41, and 4931.45)

As explained in more detail below, the bill creates a special funding 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. The bill also makes changes in the use of an expiring public utility excise tax credit and, beginning in 2005, a corporation franchise tax credit for the purpose of funding wireline 9-1-1. These changes are made within the

for a \$400,000 payment from the fund, to cover their equipment costs in initiating 9-1-1 service.



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."

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 who has a billing address in Ohio, beginning on the first day of the third month following the bill's effective date. The amount imposed on each such telephone number is 65¢ per month.

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

Charge is deposited into three funds; administration of the funds

(R.C. 4931.40(I), 4931.60, 4931.63, and 4931.68)

The bill creates three 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, 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. 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 must administer the funds and otherwise carry out duties under the bill. The PUCO 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 PUCO also may assign one or more of its employees to assist the Coordinator in carrying out duties under the bill.

The Coordinator reports directly to the PUCO, but is appointed by and serves at the pleasure of the Governor. In making the appointment, the Governor must consider nominees proposed by the Council, but may request the Council to submit additional nominees and may reject any of the nominees. The PUCO sets the compensation of the Coordinator and must evaluate the Coordinator's performance after considering the evaluation and recommendations of the Council.

The PUCO is required to adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to carry out the bill, including rules about the disbursement of moneys from the Wireless 9-1-1 Government Assistance Fund

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

and the Wireless 9-1-1 Service Provider Reimbursement Fund, into which the bulk of remittances of the charge must be credited.

The Wireless 9-1-1 Government Assistance Fund and Wireless 9-1-1 Service Provider Reimbursement Fund are created as funds in the custody of the Treasurer of State, but are not part of the state treasury (as such, they are not subject to appropriation by the General Assembly). The Treasurer of State must deposit or invest the moneys in those Funds 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 either Fund must be credited to it. The Treasurer of State disburses money from the Funds solely upon order of the Coordinator, as authorized under the bill. The Treasurer annually must certify to the Coordinator the amount of moneys belonging to each Fund.

Charge used to pay state administrative costs

(R.C. 4931.63(A))

The bill requires that a sufficient percentage, not to exceed 2%, of the periodic 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 also are paid from the fund.

Charge used to pay PSAP costs

(R.C. 4931.41(A), (J), and (K), 4931.63(B), 4931.64, and 4931.65)

One-half of the remaining remittances of the wireless 9-1-1 charge (after depositing up to 2% in the Administrative Fund) must be deposited 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 as remittances to the Wireless 9-1-1 Government Assistance Fund during the second preceding month, plus any accrued interest.

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 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. 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;

(3) Costs of staffing up to six PSAPs of a countywide 9-1-1 system to provide wireless enhanced 9-1-1, one of which shall be operated by the largest municipal corporation in the county in which the 9-1-1 system predominantly lies and the other of which shall be operated by the county sheriff's office or the board of county commissioners of that county.

The costs described in (1), (2), and (3) 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.

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.*

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 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 who have billing addresses within the respective countywide 9-1-1 system and (2) the total number of wireless telephone numbers assigned to subscribers who have billing addresses within the state. 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, 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 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, prior to the first disbursement under the bill and annually not later than January 25 thereafter, to do the following: (1) determine, for each county that has adopted a final plan, the number of wireless telephone numbers assigned to wireless service subscribers who 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.

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.*

Charge used to pay provider costs

(R.C. 4931.63(B), 4931.66, and 4931.68)

The other half of the remaining remittances of the wireless 9-1-1 charge must be deposited into the Wireless 9-1-1 Service Provider Reimbursement Fund. The bill requires the Ohio 9-1-1 Coordinator to authorize payment of a specified amount of money from the Fund to a wireless service provider that submits an invoice to the Coordinator. 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. Under the bill, a wireless service provider is prohibited from submitting an invoice prior to the fourth month following the month in which the wireless 9-1-1 charge is first imposed.

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, excluding any profit or other return on investment. The invoice submitted to the Coordinator must be accompanied by adequate supporting documentation (as specified in rules the PUCO must adopt under the bill) of the eligible costs for which the provider is seeking reimbursement and a copy of the provider's acknowledgement of the governmental request for wireless enhanced 9-1-1 that generated those costs. The invoice also must be accompanied by a certification signed by an officer of the provider, or the officer's designee, that the total amounts of costs shown on the invoice represents eligible costs 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.

The total amount of costs shown on the invoice cannot exceed 125% of the total amount of the Wireless 9-1-1 charges both remitted by the provider to the Coordinator in the second month next preceding the month in which the invoice is submitted and credited to the Wireless 9-1-1 Service Provider Reimbursement Fund, unless the provider has received prior written approval as described in "**Wireless 9-1-1 Advisory Board**," below, to submit an invoice that exceeds that cap.

The bill generally requires payment to a wireless service provider not later than one month after the date the Coordinator receives from the provider the requisite certified invoice and adequate supporting documentation. It prohibits the PUCO and the Coordinator from establishing by rule or otherwise any other standard for or condition regarding payment. However, the Coordinator must deny reimbursement to a wireless service provider if the Coordinator determines

that the provider has failed to submit requisite certification and must deny reimbursement of a particular itemized cost if the Coordinator, in consultation with the Wireless 9-1-1 Advisory Board created by the bill, determines that it is not an eligible cost under the bill or lacks adequate supporting documentation. Denial of reimbursement based on either of the latter two determinations is subject to adjudication under the Ohio Administrative Procedure Act. Payment of any reimbursement as a result of such an adjudication must be within one month after the date of the date of issuance of a decision in the adjudication and is subject to the conditions specified in (1) and (2) below.

The amount authorized for payment to a provider must equal the total amount of costs shown on the invoice as certified unless the total amount of all certified invoices submitted to the PUCO 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 balance at the time of payment, based on the total dollar amount of the provider's certified invoice relative to the total dollar amount of all certified invoices submitted that month.

(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. The applicable interest rate is that which a state agency pays in the case of an overdue payment for goods and services it purchases (unless the interest due is less than \$10).⁷

The bill requires the Coordinator, in carrying out the reimbursement provisions described above, to ensure that no provider is reimbursed for a cost for

⁷ *Such interest is calculated for the period beginning on the day after the due date and ending on the date of payment. The interest rate per calendar month is one-twelfth of the federal short-term rate for the calendar year that includes the month for which the interest charge accrues. The amount of the interest charge unpaid at the end of any 30-day period after the due date, including amounts under \$10, must be added to the principal amount of the debt, and interest then accrues on the principal amount plus the added interest charge.*

The Tax Commissioner determines the federal short-term rate annually. It is the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under a specified section of the "Internal Revenue Code of 1986," for July of the current year.

which any provider has already been reimbursed in the case of wireless enhanced 9-1-1 technology shared by two or more wireless service providers.

Additionally, the bill provides that a certification by a provider for purposes of reimbursement is a statement for purposes of existing Ohio law (R.C. 2921.13(A)(4)) establishing the criminal offense of falsification to secure benefits administered by a governmental agency or paid out of a public treasury.

Collection of the wireless 9-1-1 charge

(R.C. 4931.61, 4931.62(A) and (B), and 4931.68)

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 separate line item on the monthly bill, designated as a charge for wireless 9-1-1. However, for any subscriber of prepaid wireless service, the provider or reseller must collect the charge at the point of sale or, if the subscriber has a positive account balance on the last day of the month, must collect the charge by reducing the subscriber's account at the end of each month by the amount of the charge or an equivalent number of air time minutes.

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 Tax Commissioner to audit wireless 9-1-1 charge remittances. The bill's auditing provisions are modeled after continuing Ohio law regarding sales tax remittances (R.C. 5739.13).

Specifically, based upon information in the Tax Commissioner's possession, the Tax Commissioner may make an assessment against any wireless 9-1-1 provider or reseller that fails to bill, collect, or remit the wireless 9-1-1 charge as required by the bill. The Tax Commissioner must give the assessed party written notice of the assessment in the manner provided in continuing tax administration law (R.C. 5703.37). With the notice, the Tax Commissioner must provide instructions on how to petition for reassessment and how to request a hearing on the petition. An assessment does not discharge a subscriber's liability to reimburse the provider or reseller for the wireless 9-1-1 charge.

When information in the possession of the Tax Commissioner indicates that the amount required to be billed, collected, or remitted is greater than the amount remitted by the provider or reseller, the Tax Commissioner may audit a sample of the provider's or reseller's billings, collections, and remittances for a representative period and may issue an assessment based on that audit. The Tax Commissioner must make a good faith effort to reach agreement with the provider or reseller in selecting a representative sample. The Tax Commissioner may issue an assessment for any remittance that was due and unpaid on the date the provider or reseller was informed of the audit by an agent of the Commissioner. If, after the provider or reseller was informed of the audit, a subscriber pays a wireless 9-1-1 charge for the period covered by the assessment, the payment must be credited against the assessment.

The portion of any assessment not paid within 60 days after the date of service of the assessment notice bears interest from that date until paid at the federal short-term interest rate described earlier in a footnote to this analysis. Interest must be paid in the same manner as the wireless 9-1-1 charge and may be collected by making an assessment under the bill.

An assessment is final and due and payable to the Treasurer of State and shall be remitted to the Tax Commissioner, unless the assessed party, either

personally or by certified mail within 60 days after the date of service of the assessment notice, files with the Tax Commissioner a written petition for reassessment, signed by the party or its authorized agent having knowledge of the facts. The petition must indicate the objections of the assessed party, but additional objections may be raised in writing if received by the Tax Commissioner prior to the date shown on the final determination. If the petition has been properly filed, the Tax Commissioner must proceed in a manner consistent with continuing tax administration law (R.C. 5703.03).

After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the Tax Commissioner'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 Tax Commissioner.

All money collected by the Tax Commissioner pursuant to a wireless 9-1-1 charge audit must be paid to the Treasurer of State, for deposit to the credit of the Wireless 9-1-1 Service Funds.

Recommendations to adjust the wireless 9-1-1 charge

(R.C. 4931.68 and 4931.71)

The bill requires the PUCO to adopt rules establishing a fair and reasonable process for recommending the amount of any adjustment to the wireless 9-1-1 charge. Additionally, the bill requires the Ohio 9-1-1 Coordinator, 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. Under the bill, the wireless 9-1-1 charge may be adjusted only pursuant to an act of the General Assembly.

The Coordinator'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 "Charge used to pay 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 "Charge used to pay 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 PUCO's payroll and nonpayroll administrative costs, as described in "Charge used to pay 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 charge, the Coordinator must consider any recommendation of the Wireless 9-1-1 Advisory Board.

The Coordinator's report to the General Assembly additionally must contain a recommendation, with sufficient supporting detail, regarding the proportion of the remittances to be credited in the coming biennium to each of the wireless 9-1-1 funds. Also, it must contain a review, for the current biennium, of the implementation and provision of wireless enhanced 9-1-1 in Ohio and a description of how moneys disbursed from all three wireless 9-1-1 service funds have been used. In preparing this latter portion of the report, the Coordinator must consult with the Wireless 9-1-1 Advisory Board.

As with adjustments to the wireless 9-1-1 charge, the apportionment of the charge among the wireless 9-1-1 service funds may be adjusted only pursuant to an act of the General Assembly.

Ohio 9-1-1 Council

Composition

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

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

(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 providing to the Ohio 9-1-1 Coordinator, including, as necessary, for the purpose of the Coordinator reporting to the General Assembly, recommendations or reports 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;

(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 appointed member has one vote in all deliberations. The Coordinator is a voting member only in the case of a tie. 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 sunset of state agencies.

Conditions of service

(R.C. 4931.69(B))

Appointed members of the Council serve without compensation and are not to 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 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. 4931.70(A))

The bill creates the Wireless 9-1-1 Advisory Board, consisting of seven members as follows:

- (1) The Ohio 9-1-1 Coordinator;
- (2) The Ohio 9-1-1 Council appointee that represents public safety communication officials;
- (3) 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. 4931.70(C), (D), and (E))

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

(1) Excluding the Coordinator, 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;

(2) Excluding the Coordinator, making recommendations to and consulting with the PUCO regarding any rules to be adopted by the PUCO 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 "**Charge used to pay provider costs**," above.

The Coordinator is chairperson of the Advisory Board. Each member is a voting member of the Group and has one vote in all deliberations of the Group, except that the Coordinator can vote only in case of a tie. A majority of the voting members (excluding the Coordinator) constitutes a quorum.

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

Conditions of service

(R.C. 4931.70(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 a Group member are the same as set forth for Council members under the bill.

Information requirements

(R.C. 4931.67 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.

Expanded use of a tax credit

(R.C. 4931.45(B), 4931.47, 5727.39, 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 against its public utility 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. 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 two other circumstances: when a final plan is amended (1) to provide for wireless enhanced 9-1-1 or (2) 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. When a final plan is amended to provide for wireless enhanced 9-1-1, this funding mechanism applies with respect to the recovery of only the nonrecurring rates and charges.

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, including wireless 9-1-1, 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 the charges can occur only upon the completion of the network installation or the updating or modernization.

Current law specifies circumstances under which use of the tax credit is not allowed. The bill prohibits use of the credit for any portion of the total nonrecurring charges for the wireline telephone network used in providing wireless 9-1-1, as set forth in the filed rate schedule, to the extent that the wireline service provider, in otherwise providing 9-1-1 service, previously received those charges through the tax credit or receives or received those charges from a wireless service provider pursuant to a tariff or contract.

The use of the excise tax credit funding mechanism expires in this biennium when telephone companies are no longer subject to the excise tax. Beginning in 2005, a telephone company may use an identical tax credit against its replacement corporation franchise tax liability.

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 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.

Other 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 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.

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.

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 that 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.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-23-04	pp. 1658-1659

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