



# Ohio Legislative Service Commission

## Bill Analysis

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### **H.B. 472\***

129th General Assembly

(As Reported by S. Ways and Means and Economic Development)

**Reps.** Beck, Letson, Antonio, Barnes, Boose, Combs, Gardner, Garland, Hackett, Newbold, O'Brien, Sears, Sprague, Thompson, Wachtmann, Winburn, Young, Batchelder

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## **BILL SUMMARY**

### **Incorporating federal tax law**

- Incorporates into Ohio tax law changes to federal tax law taking effect since March 7, 2011.

### **CAT exemption for suppliers of unrefined precious metals**

- Exempts from the commercial activity tax base gross receipts derived from the sale of certain unrefined precious metals to refining facilities in the Appalachian region to the extent the refined products are shipped outside Ohio.

### **Municipal property tax abatement**

- Authorizes the abatement of unpaid property taxes, penalties, and interest owed on property that is owned by a municipal corporation and that would have qualified for property tax exemption if not for a failure to comply with certain tax exemption procedures.

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\* This analysis was prepared before the report of the Senate Ways and Means and Economic Development Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

## **9-1-1 service law changes**

### **Wireless 9-1-1 charges**

- Requires continuous imposition of the monthly wireless 9-1-1 charge on prepaid subscribers, at 25¢, and collection by wireless service providers and resellers until the new prepaid charge, which is 0.5% of the sale price of a prepaid service, collected by sellers, takes effect in 2014.
- Prohibits the wireless 9-1-1 charges from being imposed on a subscriber of lifeline service or a provider of that service.
- Delays until 2014 the Tax Commissioner's duty to notify known wireless service providers, resellers, and prepaid sellers of a change in the amount of the prepaid or nonprepaid wireless 9-1-1 charge.

### **Duties and authority of the Public Utilities Commission**

- Requires duties and authority of the Public Utilities Commission (PUCO) to be maintained as under current law until 2014, rather than transferring those to the Tax Commissioner or the Department of Public Safety immediately, including collecting charges, auditing and assessments, spending authority, and disbursement of funds.
- Terminates the 9-1-1 Service Program and the position of the Ohio 9-1-1 Coordinator, effective January 1, 2014.
- Removes provisions that would have required the Director of Public Safety to appoint and oversee an Ohio 9-1-1 Coordinator.
- Restores current law requiring PUCO to determine the rates for the wireline telephone network portion of a 9-1-1 system, to be charged to wireline telephone customers.
- Modifies the membership of the Ohio 9-1-1 Council by requiring the Ohio 9-1-1 Coordinator (within the PUCO) to serve on the Council until January 1, 2014, and requiring the Director of Public Safety (or designee) to serve on and after that date.

### **Remittance of wireless 9-1-1 charges**

- Alters provisions governing remittance of the prepaid and nonprepaid charges to the Tax Commissioner, including requiring remittance to the Tax Commissioner beginning in 2014, homogenizing requirements for the two charges, permitting 30-day extensions and removing a provision regarding reconciliation returns.

## **Audits and assessments**

- Specifies that prepaid sellers are liable to the state for amounts not collected or remitted, and specifies that providers, resellers, and prepaid sellers are liable to the state for failure to remit money to the Tax Commissioner regardless of whether the money was collected.
- Vests the audit and assessment duties with the Tax Commissioner beginning in 2014, but also modifies provisions governing those audits and assessments, including applying them to prepaid sellers, replacing procedural provisions, and permitting the Tax Commissioner to assess a person for an erroneously refunded charge.

## **Disbursements**

- Requires that the Department of Public Safety, rather than the Tax Commissioner, receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used for.
- Requires the Tax Commissioner to take over disbursement duties in 2014 from the Ohio 9-1-1 Coordinator, rather than immediately.
- Requires both the Coordinator and the Commissioner to make the disbursements in the same manner as the 2012 disbursements, in accordance with the formula and determination provisions in current law, rather than requiring the disbursements to "remain at the level disbursed in 2012."
- Requires the Tax Commissioner, beginning January 1, 2014, to make disbursements from the Next Generation 9-1-1 Fund in accordance with guidelines established by the Statewide Emergency Services Internet Protocol Network Steering Committee.
- Prescribes the wireless enhanced 9-1-1 purposes that disbursements from the Next Generation 9-1-1 Fund may be used for, and permits a subdivision or regional council of governments that certifies that it has paid these costs to use those disbursements to pay personnel costs of public safety answering points.
- Limits the number of public safety answering points that may use disbursements from the Next Generation 9-1-1 Fund.

## **Compliance with technical and operational standards**

- Requires the Department of Public Safety to monitor compliance with technical and operation standards for public safety answering points set by rule of the Statewide Emergency Services Internet Protocol Network Steering Committee.

## **Administrative funding**

- Makes effective in 2014 the funding for the Department of Public Safety (1% of the remitted wireless 9-1-1 charges) to be used for defraying administrative costs, rather than immediately.
- Makes effective in 2014 the funding for the Tax Commissioner (1% of the remitted wireless 9-1-1 charges) to be used for defraying administrative costs, rather than immediately.
- Requires the Tax Commissioner and the Director of Public Safety to annually transfer any excess from their administrative allotments to the Next Generation 9-1-1 Fund, rather than the Wireless 9-1-1 Government Assistance Fund (the main fund for the deposit of the wireless 9-1-1 charges).
- Appropriates \$1,174,000 from the General Revenue Fund to the Department of Taxation for operating expenses, effective immediately.

## **Rulemaking and administration of the 9-1-1 law**

- Permits, rather than requires, the Tax Commissioner to adopt rules to carry out the 9-1-1 law, and relieves the Commissioner of the duty to consult with the Director of Public Safety in adopting these rules.
- Removes a requirement that the Director of Public Safety, after consultation with the Tax Commissioner, adopt rules under the Administrative Procedure Act to carry out certain provisions of the 9-1-1 law.
- Permits the Director of Public Safety to adopt rules under Chapter 111. of the Revised Code, which does not require public hearings, to approve, adopt, and prescribe such forms and processes as are necessary to carry out the duties required of the Director under the 9-1-1 law.
- Permits the Director of Public Safety, at the Director's discretion, to assign Department employees to provide assistance in carrying out the Director's duties under the 9-1-1 law.

## Definitions

- Defines "consumer," for purposes of the 9-1-1 law, in a way that accords with the sales-tax law.
- Defines "reseller," for purposes of the 9-1-1 law, as a nonfacilities-based provider of wireless service that provides that service under its own name to one or more end users in Ohio using the network of a wireless service provider.

## Emergency

- Declares an emergency.

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## CONTENT AND OPERATION

### Incorporation of Internal Revenue Code changes

The bill incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 7, 2011.<sup>1</sup> The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

The principal amendments to the IRC that the bill incorporates include two changes made in the "Federal Aviation Administration (FAA) Modernization and Reform Act of 2012" that provide for tax-exempt bond financing of fixed-wing emergency medical aircraft and for an exclusion of amounts that are received by qualified airline employees in a commercial airline bankruptcy and transferred to an Individual Retirement Account.<sup>2</sup> Another amendment made in the "Moving Ahead for Progress in the 21st Century Act" (2012) permits a defined benefit pension plan to use excess pension assets to fund retiree group-term life insurance benefits and excludes from a retiree's gross income the cost of providing group-term life insurance purchased using the excess pension assets.<sup>3</sup>

Ongoing Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly.<sup>4</sup>

### Election to apply incorporation to closed years

The bill also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Current law authorizes a taxpayer whose taxable year ended after December 15, 2010, and before March 7, 2011, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year if those laws differ from the laws that are incorporated under the bill. (The December and March dates are the dates of the two preceding

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<sup>1</sup> R.C. 5701.11.

<sup>2</sup> Sections 1105 and 1106 of the federal act.

<sup>3</sup> Section 4042 of the federal act.

<sup>4</sup> Cf. *State of Ohio v. Gill* (1992), 63 Ohio St.3d 53.

incorporations.) The election is available to taxpayers who are subject to the corporation franchise tax or personal income tax and to electric companies that are subject to municipal income taxes.

The bill updates this election so that it may be made for a taxpayer's taxable year ending after March 7, 2011, but before the bill's effective date. The bill retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.

## **Commercial activity tax exemption**

The bill extends the existing commercial activity tax exemption for receipts derived from sales of certain property to "qualified distribution centers" to include sales of unrefined gold, silver, platinum, and palladium to refineries in the Appalachian region. Gross receipts of suppliers derived from such sales are exempted to the extent the refinery ships the refined precious metals outside Ohio.

### **Tax base**

The commercial activity tax is an annual excise tax imposed on businesses for the privilege of doing business in Ohio. The tax base or measure for the commercial activity tax is "taxable gross receipts." Generally, taxable gross receipts are a company's gross receipts that are attributed to the company's Ohio business activity as prescribed under the "siting" or attribution rules. Taxable gross receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. There are currently 36 categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.<sup>5</sup>

### **Exemption for qualifying distribution center receipts**

Current law exempts a percentage of receipts derived from property shipped to qualified distribution centers for purposes of the commercial activity tax. Existing law defines "qualified distribution center" as a warehouse or other similar facility in Ohio that has obtained a qualifying certificate from the Department of Taxation indicating that the facility's suppliers qualify for the exemption. All warehouses or other similar facilities that are operated by persons in the same taxpayer group and are located within one mile of each other are considered to be one qualified distribution center. To qualify for the exemption, a supplier must deliver property to the qualified distribution center solely for further shipping by the center to another location inside or outside

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<sup>5</sup> R.C. 5751.01(F) and (G).

Ohio. The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or processing.

The bill revises the criteria for certification as a qualified distribution center so that suppliers of gold, silver, platinum, and palladium to "refining facilities" are eligible for the exemption. "Refining facility" is defined as one or more buildings located in an Appalachian county and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fitness acceptable for delivery to a "registered commodities exchange."<sup>6</sup> Only a board of trade designated as a contract market by the Commodity Futures Trading Commission meets the criteria of being a registered commodities exchange for the purpose of the exemption. The New York Mercantile Exchange, Inc. (NYMEX) and Commodity Exchange, Inc. (COMEX) are examples of registered commodities exchanges.<sup>7</sup>

The bill specifies that gold, silver, platinum, or palladium supplied to a refining facility may be smelted or put through some other process to extract the impurities without disqualifying the supplier from the exemption.<sup>8</sup> It also specifies that, for purposes of property sold to a refining facility, "supplier" includes dealers, brokers, processors, sellers, vendors, cosigners, and distributors.<sup>9</sup> Operators of refining facilities run by persons in the same taxpayer group and located in the same or adjacent counties are permitted, but not required, to treat multiple refining facilities as one qualified distribution center for the purpose of the exemption.<sup>10</sup>

### **Amount of the exemption**

Under current law, only a percentage of receipts from qualifying property delivered to a qualified distribution center is exempted from the commercial activity tax. The percentage exempted equals the percentage of the property supplied to the distribution center that is shipped from the center to locations outside Ohio.<sup>11</sup>

Under the bill, all receipts derived in calendar years 2013 and 2014 from the delivery of gold, silver, platinum, and palladium to refining facilities certified as qualified distribution centers are exempted from commercial activity tax. The

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<sup>6</sup> R.C. 5751.01(F)(2)(z)(i)(VIII).

<sup>7</sup> R.C. 5751.01(F)(2)(z)(i)(IX).

<sup>8</sup> R.C. 5751.01(F)(2)(z)(i)(II).

<sup>9</sup> R.C. 5751.01(F)(2)(z)(i)(I).

<sup>10</sup> R.C. 5751.01(F)(2)(z)(i)(III).

<sup>11</sup> R.C. 5751.01(F)(2)(z)(i)(VII) and (F)(2)(z)(iii).

exemption percentage for suppliers of refining facilities would be calculated in the same manner as for other qualifying distribution center receipts in calendar year 2015 and thereafter.<sup>12</sup>

### **Application deadline**

Current law requires operators of distribution centers to submit annual applications to the Tax Commissioner for a "qualifying certificate" in order to be certified as a qualified distribution center. The application must be filed no later than September 1 of the year preceding the year for which the certificate is issued or 45 days after the distribution center is opened, whichever is later. A \$100,000 application fee must accompany each application. The fee is refunded to an applicant if an application for a certification is denied and that denial is ultimately affirmed on appeal.<sup>13</sup>

The bill permits operators of refining facilities to apply for a qualifying certificate and pay the annual fee for calendar year 2013 within 30 days of the bill's effective date.<sup>14</sup> The deadlines prescribed by current law apply to refining facilities for calendar years 2014 and thereafter.

### **Information accompanying certificate application**

Under current law, eligibility for a certificate is conditioned upon certain criteria being met by the distribution center during a "qualifying period," which is the period of July 1 of the second year preceding the year for which the certificate is issued to June 30 of the year immediately preceding the year for which the certificate is issued (e.g., July 1, 2011, to June 30, 2012, for a 2013 certificate). Every applicant must substantiate to the Commissioner's satisfaction that, during the qualifying period, all persons operating the center had more than 50% of the cost of the property shipped from the center to a location outside Ohio. An applicant must also substantiate that the distribution center had cumulative costs from its suppliers of at least \$500 million for the qualifying period. The Tax Commissioner is authorized to require that an applicant obtain a certification from a certified public accountant that the calculations of the 50% situsing requirement and the \$500 million threshold have been made in accordance with generally accepted accounting principles. Finally, every application must certify the percentage of

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<sup>12</sup> Section 7 of the bill.

<sup>13</sup> R.C. 5751.01(F)(2)(z)(i)(VI).

<sup>14</sup> Section 7 of the bill.

property shipped to locations inside Ohio during the qualifying period (referred to as the "Ohio delivery percentage").<sup>15</sup>

For calendar years 2013 and 2014, the bill exempts operators of refining facilities from the requirements of substantiating that all persons operating the center had more than 50% of the cost of the property shipped from the center situated to a location outside Ohio, obtaining certification from an independent certified public accountant that the calculation of the minimum thresholds has been made in accordance with generally accepted accounting principles, and providing documentation for the Tax Commissioner to ascertain the Ohio delivery percentage.<sup>16</sup> The bill does require operators of refining facilities to substantiate that the refining facility had cumulative costs from its suppliers equal to or exceeding \$500 million for the qualifying period. Refining facilities would be subject to the same application requirements as other qualified distribution centers for calendar year 2015 and thereafter.

### **Property tax abatement for municipal property**

The bill provides for the abatement of unpaid property taxes, penalties, and interest on property that is owned by a municipal corporation and that would have been tax exempt if not for a failure to comply with the procedures for obtaining tax-exempt status.<sup>17</sup> The current owner of the property may file an application with the Tax Commissioner requesting that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest be abated. Similarly, a prior owner of the property may file an application requesting exemption from prior taxes. The application must be filed within 12 months after the provision's effective date.

Under current law, the Tax Commissioner may abate only up to three years' worth of unpaid property taxes, interest, and penalties. No exemption may be granted if, after any abatement of taxes, there remain unabated unpaid taxes.

### **Procedures for receiving bill's tax abatement**

Before filing an application for tax abatement, the property owner must request a certificate from the county treasurer stating that all taxes, penalties, and interest owed on the property before the property was used for a tax-exempt public purpose have been paid in full. This certificate must accompany the application filed with the Tax Commissioner.

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<sup>15</sup> R.C. 5751.01(F)(2)(z)(i)(VI) and (F)(2)(z)(iii).

<sup>16</sup> Section 7 of the bill.

<sup>17</sup> Section 6 of the bill.

The application form must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of unpaid taxes, penalties, and interest; the date of acquisition of the property; the use of the property during any time in which unpaid taxes accrued; and any other information required by the Tax Commissioner.

Upon receipt of an application, the Tax Commissioner must determine whether the applicant meets all of the qualifications specified in the bill and, if so, order that the property be placed on the tax-exempt list and that all unpaid taxes, penalties, and interest from each year the property meets the qualifications be abated. If the Tax Commissioner finds that the property does not meet the qualifications, or is otherwise being used for a purpose that would foreclose its right to exemption, the Tax Commissioner issues an order denying the application. For any year that the applicant is not entitled to tax abatement, the Tax Commissioner must order the county treasurer to collect any unpaid taxes, penalties, and interest on that property for those years.

In addition, the Tax Commissioner may consider whether property qualifies for tax abatement if that property is already subject to an application for exemption pending on the effective date of the bill without requiring the property owner to file another application. The Tax Commissioner may also allow for abatement of unpaid taxes on any qualified property that is subject to an application for exemption within 12 months after the effective date even if the application does not specifically request tax abatement.

## **9-1-1 service law changes**

### **Background on the changes made by H.B. 360**

H.B. 360, which is an emergency measure that has passed the General Assembly but has not yet been signed by the Governor, makes numerous changes to Ohio's 9-1-1 service law. It establishes a new method and amount of the wireless 9-1-1 charge imposed on prepaid subscribers, and requires this charge to take effect on July 1, 2013. It makes the current charge imposed on wireless subscribers permanent (rather than expiring on December 31, 2012), but exempts prepaid subscribers. It transfers all of the duties of the Public Utilities Commission, in administering the 9-1-1 law, to either the Department of Public Safety or the Tax Commissioner, and consequently recodifies the 9-1-1 law in Chapter 5507. of the Revised Code. It delays some of the Tax Commissioner's duties, mostly related to the new prepaid charge, until July 1, 2013. It also gives additional responsibilities to the Statewide Emergency Services Internet Protocol Network Steering Committee.

This analysis does not address all the changes made by Sub. H.B. 360 to the 9-1-1 service law nor does it directly address how Sub. H.B. 472 changes that law. H.B. 472 amends the provisions of H.B. 360 as enacted by the General Assembly and depends on H.B. 360's provisions as passed by the Senate becoming effective. Therefore, this analysis primarily addresses how the bill changes provisions of H.B. 360 and, when appropriate, addresses the effect of both bills on the 9-1-1 service law.

### **Continuous imposition of the prepaid wireless 9-1-1 charge**

The bill requires the monthly wireless 9-1-1 charge, imposed under current law on all wireless subscribers, to be continuously imposed on prepaid subscribers, beginning on the bill's effective date and ending when a new prepaid charge takes effect in 2014. Under H.B. 360, the charge would have been terminated as to prepaid subscribers only. And the new prepaid charge would not have taken effect until July 1, 2013, causing a 6 to 7 month lapse in imposition of the charge on prepaid subscribers.

There is a possibility that there will still be a few days' lapse in imposition of the charge as to prepaid subscribers, if H.B. 360 takes effect before H.B. 472. Both bills have immediate effective dates, and therefore take effect when signed by the Governor. H.B. 360 has already passed the General Assembly, and H.B. 472 has yet to pass the Senate. Because the charge is monthly, the effect of a few days' lapse in imposition, if any, is uncertain.

Under H.B. 472, the monthly charge on prepaid subscribers is to be imposed and collected until January 1, 2014, almost in the same manner as in current law. The only differences are that: (1) the monthly amount is to be 25¢, which is consistent with the amount in H.B. 360, which was decreased from 28¢ under current law, and (2) wireless service providers and resellers would not be able to collect the prepaid charge at the point of sale. The two current-law methods of collection allowed by the bill are: (1) reducing the subscriber's account balance at the beginning of the month and (2) taking the amount owed to the state out of the provider's or reseller's prepaid revenue from Ohio sales, according to a formula that is based on the 25¢ charge.

As stated above, the bill requires the new prepaid charge of 0.5%, imposed at the point of sale, to begin on January 1, 2014. H.B. 360, which enacted the new charge, would have required it to take effect on July 1, 2013.<sup>18</sup>

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<sup>18</sup> R.C. 5507.42.

## **Exclusion for lifeline service**

The bill clarifies that the wireless 9-1-1 *charges* (not charge) may not be imposed on a *subscriber* of a wireless lifeline service, or a provider of that service. H.B. 360 had stated that the charge may not be imposed on a wireless lifeline service provider. But under H.B. 360, the charges are described as being imposed on the *subscribers* – not the providers. The providers are responsible for collection.<sup>19</sup>

## **Delay in duty of the Tax Commissioner regarding notice**

The bill delays, from July 1, 2013, to January 1, 2014, the requirement that the Tax Commissioner notify all known wireless service providers, resellers, and prepaid sellers of any change in the amount of the prepaid or nonprepaid wireless 9-1-1 charges.<sup>20</sup>

## **Continuation of duties of the Public Utilities Commission (PUCO) until 2014**

The bill requires that the following duties and authority be maintained by the Public Utilities Commission (PUCO) or the Ohio 9-1-1 Coordinator within the PUCO as under current law until January 1, 2014. H.B. 360 would have required most of these duties and authority to be transferred immediately to the Tax Commissioner. In the case of funding provisions, they would have been transferred to the Department of Taxation (or the Tax Commissioner) and the Department of Public Safety.

- Collection of remitted wireless 9-1-1 charges;<sup>21</sup>
- Auditing and assessing wireless service providers and resellers for failure to collect, bill, or remit wireless 9-1-1 charges;<sup>22</sup>
- Authority to use up to 2% of the periodic remittances of the wireless 9-1-1 charges to cover the PUCO's costs of carrying out its duties under the wireless 9-1-1 law;<sup>23</sup>
- Authority to make disbursements to counties from the Wireless 9-1-1 Government Assistance Fund (except that the bill requires disbursements

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<sup>19</sup> R.C. 5507.42.

<sup>20</sup> R.C. 5507.44.

<sup>21</sup> R.C. 5507.46(A).

<sup>22</sup> R.C. 5507.46(E).

<sup>23</sup> R.C. 5507.53(A) and Sections 4 and 5.

to be made in the same manner as the 2012 disbursements, in accordance with current law).<sup>24</sup>

## Remittance of wireless 9-1-1 charges to the Tax Commissioner

### Remittance requirements

The bill changes the provisions governing remittance of both the prepaid and nonprepaid wireless 9-1-1 charges to the Tax Commissioner.

First, the bill requires the charges to be remitted to the Tax Commissioner beginning January 1, 2014. Until then, the monthly charge on prepaid and nonprepaid subscribers must be remitted to the Ohio 9-1-1 Coordinator in accordance with current law (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**"). H.B. 360 would have required the Tax Commissioner to begin remittance duties immediately, for the nonprepaid charge.

Second, the bill homogenizes the remittance requirements for the prepaid charge and the nonprepaid charge, as remitted to the Tax Commissioner. H.B. 360 would have required the nonprepaid charge to be remitted to the Tax Commissioner in the same manner as current law governing remittance of the wireless 9-1-1 charges to the Ohio 9-1-1 Coordinator. But it established separate remittance requirements for sellers required to collect the prepaid charge. For the most part, the bill requires the wireless service providers and resellers required to collect the nonprepaid charge to be subject to the same requirements that were in H.B. 360 for prepaid sellers. The following table compares the bill's requirements, now imposed on all charge collectors, to the requirements that applied only to wireless service providers and resellers under H.B. 360.

H.B. 360 requirements for nonprepaid	H.B. 472 requirements for both charges
Remittance by the end of each month.	Remittance by the 23rd of each month.
No provision.	Make and file a return for the preceding month showing the amount due for the month.
No provision.	File return electronically using the Ohio Business Gateway, the Ohio Telefile System, or any other electronic means prescribed by the Tax Commissioner, unless excused for good cause shown.
Remit the amount collected for the second preceding calendar month, minus a 2% billing and collection fee.	Remit the full amount due for the preceding month, minus a 3% collection fee.

<sup>24</sup> R.C. 5507.53(B) and 5507.55(A).

H.B. 360 requirements for nonprepaid	H.B. 472 requirements for both charges
Remit amounts in any reasonable manner consistent with the provider's or reseller's operating or technological capabilities.	Remit amounts due electronically in a manner approved by the Tax Commissioner, unless excused for good cause shown.
No provision.	Extensions permitted for making and filing returns and remitting amounts due.

The only remittance provisions that the bill continues to apply only to sellers collecting the prepaid charge is provision allowing the Tax Commissioner to authorize sellers to make and file returns less frequently than monthly. This would apply if the seller is required to collect prepaid charges in amounts that do not merit monthly returns, ascertained on the basis of administrative costs to the state.

Third, the bill changes some of the remittance requirements that, under the bill, are applied to all charge collectors. Rather than requiring the return to show the amount of the charges collected during the preceding month, it requires the return to show the amount of the charges *due* for that month. It also clarifies that the 3% collection fee need not be remitted. Finally, it permits the Tax Commissioner to grant one or more 30-day extensions for making and filing returns and remitting amounts due, rather than simply stating that the Commissioner may "extend" that time.

The bill also removes a provision that would have permitted the Commissioner to require that the return for the last month of any annual or semiannual period be a reconciliation return detailing the prepaid charges collected during the preceding annual or semiannual period.<sup>25</sup>

### **Liability**

The bill maintains current law until January 1, 2014, ascribing liability to subscribers on whom the monthly wireless 9-1-1 charge is imposed, and also to providers or resellers who fail to bill, collect, or remit that charge.

Beginning January 1, 2014, the bill continues to maintain current law regarding this liability, for the most part, but adds that prepaid sellers are liable to the state for amounts not collected or remitted. It modifies slightly the liability provision regarding failure to remit charges, specifying that if a provider, reseller, or seller fails to remit money to the Tax Commissioner as required, that provider, reseller, or seller is liable to

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<sup>25</sup> R.C. 5507.46(A) and (B).

the state for the amount not remitted, *regardless of whether it was collected*. H.B. 360 would have made this liability apply only if the charge was collected but not remitted.<sup>26</sup>

### **Audits and assessments**

As explained above, the bill restores the PUCO's duties under current law regarding audits and assessments of wireless service providers and resellers, until January 1, 2014 (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**"). Beginning on that date, the bill vests the audit and assessment duties with the Tax Commissioner, but also modifies the audit and assessment provisions that would have been vested with the Tax Commissioner under H.B. 360.

First, the bill applies the audit and assessment provisions in R.C. 5507.46, which would have applied only to providers and resellers under H.B. 360, to prepaid sellers. But H.B. 360 would also subject prepaid sellers to the sales-tax law as it applies to audits, assessments, appeals, enforcement, liability, and penalties, beginning July 1, 2013. (See **COMMENT 1**.)

Second, the bill removes a provision stating that an assessment is final and due and payable and must be remitted to the Tax Commissioner unless the assessed party petitions for rehearing under law governing PUCO procedure. The bill removes a related provision stating that proceedings of the Tax Commissioner are subject to and governed by that law, except that the court of appeals of Franklin County has exclusive, original jurisdiction to review, modify, or vacate an order of the Tax Commissioner. The bill removes other provisions related to these court proceedings.

Instead, the bill provides that unless the provider, reseller, or seller assessed files with the Tax Commissioner within 60 days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due and payable from the party assessed to the Treasurer of State, for deposit to the Next Generation 9-1-1 Fund, which would be created by H.B. 360. H.B. 360 would have required that all assessments be deposited to the credit of the Wireless 9-1-1 Government Assistance Fund. The bill requires the petition to indicate the objections of the party assessed, but allows additional objections to 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 under law governing proceedings for petitions on reassessment under the tax law.

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<sup>26</sup> R.C. 5507.46(D)(1) and (2)(a).

Third, the bill adds a provision requiring that the portion of an assessment not paid within 60 days after the day the assessment was issued bears interest at the federal short-term interest rate (as determined by the Tax Commissioner under Ohio law) per annum from the day the Tax Commissioner issues the assessment until it is paid. The bill requires interest to be remitted in the same manner as the 9-1-1 charges, and specifies that interest may be collected by the issuance of an assessment. The bill then repeats in almost identical form the unpaid assessment language described above making it apparent that the Tax Commissioner has authority to make further assessments on unpaid assessments for interest and to allow consecutive assessments for unpaid interest.

Fourth, the bill changes a provision that permits certified copies of unpaid assessments to be filed with the court of common pleas in the county in which the *place of business* of the assessed party is *located*. The bill changes this to "in which the *business* of the assessed party is *conducted*."

Fifth and finally, the bill permits the Commissioner to assess a person for recovery of a refunded wireless 9-1-1 charge that the Commissioner determines was erroneously refunded.<sup>27</sup>

### **9-1-1 Service Program and Ohio 9-1-1 Coordinator**

The bill requires that the Public Utilities Commission and the Ohio 9-1-1 Coordinator retain their duties under current law until January 1, 2014, with regard to the 9-1-1 Service Program and administration of the 9-1-1 Government Assistance Fund. The bill also abolishes the position of the Coordinator, effective January 1, 2014. H.B. 360 would have transferred the program duties and duties related to the Coordinator to the Director of Public Safety, and the fund administration duties to the Tax Commissioner, both to take immediate effect. H.B. 360 would have also required the Director to appoint an interim Coordinator, and, after submission of a list of nominees, a final Coordinator.<sup>28</sup>

### **Rate-determination requirement transferred back to PUCO**

The bill restores current law, with no end date, for the requirement that PUCO determine the rates for the wireline telephone network portion of a 9-1-1 system, to be

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<sup>27</sup> R.C. 5507.46(F).

<sup>28</sup> R.C. 5507.40 and Sections 4 and 5.

charged to wireline telephone customers. H.B. 360 would have required the Tax Commissioner to make this determination.<sup>29</sup>

### **Responsibilities transferred to the Department of Public Safety**

Effective immediately, the bill requires that the Department of Public Safety, rather than the Tax Commission (as required by H.B. 360), receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used for. After this certification is made, the subdivision or council may use disbursements to pay personnel costs of public safety answering points providing countywide wireless enhanced 9-1-1 service.<sup>30</sup> (See **COMMENT 2**.)

The bill shifts responsibility solely to the Department of Public Safety, rather than the Department *or the Tax Commissioner*, for requesting that the Attorney General begin proceedings against a telephone company to enforce compliance with the 9-1-1 law or a local-government plan or agreement under that law.<sup>31</sup>

### **Compliance with standards adopted by the steering committee**

The bill requires the Department of Public Safety to monitor compliance with technical and operation standards for public safety answering points set by rule of the Statewide Emergency Services Internet Protocol Network Steering Committee. Under H.B. 360, disbursements may not be made to counties from either the Wireless 9-1-1 Government Assistance Fund or the Next Generation 9-1-1 Fund unless "the public safety answering point" meets those standards.<sup>32</sup> The rules that set the standards must incorporate industry standards and best practices for wireless 9-1-1 services. "Public safety answering points" must comply with the standards not later than two years after the effective date of the rules adopting the standards.<sup>33</sup> (See **COMMENT 3**.)

In addition to monitoring compliance with the standards, the bill requires the Department to notify the Tax Commissioner to suspend disbursements to a countywide 9-1-1 system that fails to meet the standards. Upon receipt of the notification, the

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<sup>29</sup> R.C. 5507.18; conforming change in R.C. 5733.55.

<sup>30</sup> R.C. 5507.57(B).

<sup>31</sup> R.C. 5507.34(A).

<sup>32</sup> R.C. 5507.57(E).

<sup>33</sup> R.C. 5507.021, not in Sub. H.B. 472.

Commissioner must suspend disbursements until the Commissioner is notified of compliance with the standards.<sup>34</sup>

### **Administrative funding**

Effective January 1, 2014, the bill creates the Wireless 9-1-1 Public Safety Administrative Fund for 1% of remittances from the wireless 9-1-1 charges to be used by the Director of Public Safety to defray the costs incurred in carrying out the Director's 9-1-1 duties. H.B. 360 would have required this 1% go into the Wireless 9-1-1 Administrative Fund for use by the Director; this fund is currently used by PUCO for administrative costs. H.B. 360 would have also made the Director's spending authority effective immediately.

Also effective January 1, 2014, the bill requires the 1% of remittances authorized by H.B. 360 to be used by the Tax Commissioner to go into the Wireless 9-1-1 Administrative Fund. H.B. 360 would have made the spending authority take effect immediately.

The bill requires that the Tax Commissioner and the Director of Public Safety annually transfer any excess from their administrative allotments to the Next Generation 9-1-1 Fund, which would be created by H.B. 360. H.B. 360 would have contained a similar requirement, but the excess amounts would have been required to go into the Wireless 9-1-1 Government Assistance Fund.<sup>35</sup>

### **Appropriation for the Department of Taxation**

The bill appropriates \$1,174,000 from the General Revenue Fund to the Department of Taxation for operating expenses, effective immediately.<sup>36</sup>

### **Requirements for making disbursements**

As explained above (see "**Continuation of duties of the Public Utilities Commission (PUCO) until 2014**"), the bill requires the Ohio 9-1-1 Coordinator to continue making disbursements from the wireless 9-1-1 charge to counties until 2014. The bill requires the Tax Commissioner to take over this duty on January 1, 2014.

The bill requires both the Coordinator and the Commissioner to make the disbursements in the same manner as the 2012 disbursements, in accordance with the

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<sup>34</sup> R.C. 5507.57(B)(2).

<sup>35</sup> R.C. 5507.53 and 5507.54.

<sup>36</sup> Section 3.

formula and determination provisions in current law. H.B. 360 would have required, effective July 1, 2013, the Tax Commissioner's disbursements to "remain at the level disbursed in 2012."

The bill also requires the Tax Commissioner, beginning January 1, 2014, to make disbursements from the Next Generation 9-1-1 Fund in accordance with guidelines established by the Statewide Emergency Services Internet Protocol Network Steering Committee.<sup>37</sup>

### **Use of disbursements**

The bill prescribes that disbursements from the Next Generation 9-1-1 Fund may be used only for the following three wireless enhanced 9-1-1 purposes:

- Designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for public safety answering points to provide wireless enhanced 9-1-1;
- Costs of training public-safety-answering-point staff to provide wireless enhanced 9-1-1;
- Annually, up to \$25,000 of disbursements received on or after January 1, 2009, may be used for data, hardware, and software that automatically alert personnel receiving a 9-1-1 call that a person at the subscriber's address or telephone number may have a mental or physical disability.

Disbursements from the Next Generation 9-1-1 Fund may *not* be used for costs enumerated above that were in part for the provision of *wireline* 9-1-1.

The bill allows that a subdivision or regional council of governments that certifies to the Department of Public Safety that it has paid these costs may use disbursements from the Next Generation 9-1-1 Fund to pay personnel costs of public safety answering points providing countywide wireless enhanced 9-1-1 service.<sup>38</sup>

But H.B. 360 requires the Statewide Emergency Services Internet Protocol Network Steering Committee to establish guidelines for the Tax Commissioner to use when disbursing money from the Next Generation 9-1-1 Fund. It would also require the guidelines to be consistent with the technical and operation standards adopted by

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<sup>37</sup> R.C. 5507.55.

<sup>38</sup> R.C. 5507.57.

the steering committee, and to specify that disbursements from the Next Generation 9-1-1 Fund may be used for costs associated with the operation of and equipment for Phase II wireless systems and for costs associated with a county's migration to next generation 9-1-1 systems and technology.<sup>39</sup> (See **COMMENT 4**.)

The bill also limits the number of public safety answering points that may use disbursements from the Next Generation 9-1-1 Fund, in accordance with provisions in H.B. 360.<sup>40</sup>

### **Suspension of disbursements for failure to make report**

The bill provides that the Ohio 9-1-1 Coordinator must suspend disbursements from the Wireless 9-1-1 government Assistance Fund to a county whose county 9-1-1 planning commission chairperson or designee failed, by February 15, 2013, to submit a 9-1-1 system informational report to the Statewide Emergency Services Internet Protocol Network Steering Committee. When a late report is received, the bill requires the Committee to notify the Coordinator, who must then resume the reimbursements. Beginning January 1, 2014, the Tax Commissioner is to begin receiving the notice from the Committee that a late report was received and is to have the duty to resume the reimbursements. H.B. 360 would have required the Tax Commissioner to cut off disbursements, as well as order the resumption of disbursements, from the Wireless 9-1-1 Government Assistance Fund to a county that makes a late report to the Committee.<sup>41</sup>

### **Rulemaking authority**

#### **Tax Commissioner**

The bill permits, rather than requires, the Tax Commissioner to adopt rules to carry out the 9-1-1 law. It also relieves the Tax Commissioner of the duty to consult with the Director of Public Safety in adopting these rules. The bill also specifies that the rulemaking authority is for the purpose of carrying out the whole 9-1-1 law, not just sections enumerated in H.B. 360.<sup>42</sup>

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<sup>39</sup> R.C. 5507.022, not in Sub. H.B. 472.

<sup>40</sup> R.C. 5507.571, not in Sub. H.B. 472.

<sup>41</sup> R.C. 5507.02(D)(2).

<sup>42</sup> R.C. 5507.63.

## Director of Public Safety

The bill removes a requirement that the Director of Public Safety, after consultation with the Tax Commissioner, adopt rules under the Administrative Procedure Act to carry out certain provisions of the 9-1-1 law.<sup>43</sup> Instead, the bill permits the Director to adopt rules under Chapter 111. of the Revised Code, which does not require public hearings, to approve, adopt, and prescribe such forms and processes as are necessary to carry out the duties required of the Director under the 9-1-1 law.<sup>44</sup>

The bill also removes a provision requiring the Wireless 9-1-1 Advisory Board to make recommendations to and consult with the Director regarding rules to be adopted relative to the 9-1-1 law.<sup>45</sup>

## Ohio 9-1-1 Council

The bill modifies the membership of the Ohio 9-1-1 Council by requiring the Ohio 9-1-1 Coordinator (within the PUCO) to serve on the Council until January 1, 2014, and requiring the Director of Public Safety (or designee) to serve on and after that date.<sup>46</sup>

## Duties of the Director of Public Safety

The bill states that the Director of Public Safety or the Director's designee must carry out the duties required of the Director under the 9-1-1 law. But the bill permits the Director, at the Director's discretion, to assign Department employees to provide assistance in carrying out those duties.<sup>47</sup> H.B. 360 would have permitted the Director to assign one or more Department employees to assist the Ohio 9-1-1 Coordinator in carrying out the Coordinator's duties. But under H.B. 360, the Coordinator was appointed by the Director; under this bill, the Coordinator remains within the PUCO until the position is abolished in 2014.<sup>48</sup> (See "**9-1-1 Service Program and Ohio 9-1-1 Coordinator**," above.)

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<sup>43</sup> R.C. 5507.63.

<sup>44</sup> R.C. 5502.011(F)(2).

<sup>45</sup> R.C. 5507.66(D).

<sup>46</sup> R.C. 5507.65(A).

<sup>47</sup> R.C. 5502.011(F)(1).

<sup>48</sup> R.C. 5507.40 and Sections 4 and 5.

## Definitions

### Consumer

The bill defines "consumer," for purposes of the 9-1-1 law, as the person for whom the prepaid wireless calling service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the prepaid wireless calling service is charged, or to whom the admission is granted. This generally conforms to the definition of "consumer" in current law governing the sales tax.<sup>49</sup>

### Reseller

The bill defines "reseller," for purposes of the 9-1-1 law, as a nonfacilities-based provider of wireless service that provides that service under its own name to one or more end users in Ohio using the network of a wireless service provider.<sup>50</sup> "Wireless service provider" is defined in current law as a facilities-based provider of wireless service to one or more end users in Ohio.<sup>51</sup>

## Emergency clause

The bill declares an emergency, causing the act to become effective immediately and exempting it from the referendum.

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## COMMENT

1. The bill applies specific and extensive audit and assessment requirements and provisions to prepaid sellers.<sup>52</sup> But H.B. 360 would also subject prepaid sellers to the sales-tax law as it applies to audits, assessments, appeals, enforcement, liability, and penalties, beginning July 1, 2013.<sup>53</sup> These provisions may conflict if they subject prepaid sellers to different governing law regarding audits and assessments.

2. The bill requires, effective immediately, the Department of Public Safety to receive certifications that a subdivision or regional council of governments has paid the basic costs for which disbursements from the wireless 9-1-1 charges may be used for.<sup>54</sup>

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<sup>49</sup> R.C. 5507.01(BB); 5739.01(D)(1), not in Sub. H.B. 472.

<sup>50</sup> R.C. 5507.01(CC); conforming changes in R.C. 5507.42, 5507.44, and 5507.46.

<sup>51</sup> R.C. 5507.01(G).

<sup>52</sup> R.C. 5507.46(F).

<sup>53</sup> R.C. 5507.52(A), not in Sub. H.B. 472.

<sup>54</sup> R.C. 5507.57(B).

But the Public Utilities Commission retains sole responsibility for making disbursements until January 1, 2014.<sup>55</sup>

3. The bill describes provisions relating to a failure of compliance with standards adopted by the Statewide Emergency Services Internet Protocol Network Steering Committee in terms of a "countywide 9-1-1 system" failing to meet the standards.<sup>56</sup> But H.B. 360 describes the same concept as "the public safety answering point" and, separately, "public safety answering points" meeting the standards.<sup>57</sup> Therefore, the bill adds to a lack of clarity created by H.B. 360 in terms of who or what is required to comply with the standards – whether it is a single public safety answering point, multiple points, or an entire 9-1-1 system.

4. The bill requires disbursements from the Next Generation 9-1-1 Fund to be used for specific purposes enumerated in existing law, such as designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for public safety answering points to provide wireless enhanced 9-1-1.<sup>58</sup> But H.B. 360 requires the Statewide Emergency Services Internet Protocol Network Steering Committee to establish guidelines that specify that disbursements from the Next Generation 9-1-1 Fund may be used for costs associated with the operation of and equipment for Phase II wireless systems and for costs associated with a county's migration to next generation 9-1-1 systems and technology.<sup>59</sup> These provisions may conflict if they require disbursements from the Next Generation 9-1-1 Fund to be spent for different purposes.

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## HISTORY

ACTION	DATE
Introduced	03-07-12
Reported, H. Ways & Means	05-03-12
Passed House (96-0)	05-15-12
Reported, S. Ways & Means & Economic Development	---

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<sup>55</sup> R.C. 5507.55.

<sup>56</sup> R.C. 5507.57(E)(2).

<sup>57</sup> R.C. 5507.57(E)(1).

<sup>58</sup> R.C. 5507.57.

<sup>59</sup> R.C. 5507.022.