

**Department of Legislative Services**  
 Maryland General Assembly  
 2012 Session

**FISCAL AND POLICY NOTE**

House Bill 779 (Chair, Health and Government Operations  
 Committee)(By Request - Departmental - Public Safety  
 and Correctional Services)

Health and Government Operations

**Public Safety - 9-1-1 Emergency Telephone Systems - Prepaid Service - Collection  
 of Surcharge**

This departmental bill establishes that the surcharge on wireless telecommunication services applies to prepaid service and establishes the amount of the prepaid wireless E 9-1-1 fee at 60 cents per each retail transaction.

The bill takes effect July 1, 2012.

**Fiscal Summary**

**State Effect:** Special fund revenues and expenditures for the 9-1-1 Trust Fund increase by \$3.1 million in FY 2013 and by \$4.0 million annually beginning in FY 2014. General fund expenditures for the Comptroller’s Office increase by \$263,300 in FY 2013 for one-time computer programming modifications and mailing costs to all sales and use tax accounts.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	\$3,125,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
GF Expenditure	\$263,300	\$0	\$0	\$0	\$0
SF Expenditure	\$3,125,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
Net Effect	(\$263,300)	\$0	\$0	\$0	\$0

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Local government grant amounts increase by \$2.25 million in FY 2013 and by \$3.0 million annually thereafter, varying by jurisdiction.

**Small Business Effect:** The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment as discussed below.

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## Analysis

**Bill Summary:** The bill defines “prepaid wireless telecommunications service” as a commercial mobile radio service that allows a consumer to dial 9-1-1 to access the 9-1-1 system, must be paid for in advance, and is sold in predetermined units which decline with use in a known amount.

The bill establishes a prepaid wireless E 9-1-1 fee of 60 cents per retail transaction, which must be collected by the “seller” from the “consumer” for each retail transaction in the State. The amount of the fee must be disclosed to the consumer at the time of the retail transaction.

A retail transaction occurs in the State if (1) the sale or recharge takes place at the seller’s place of business located in the State; (2) the consumer’s shipping address is in the State; or (3) no item is shipped, but the consumer’s billing address or the location associated with the consumer’s mobile telephone number is in the State. The prepaid fee is the liability of the consumer and not of the seller or of any “provider.”

Before December 28, 2012, a seller may deduct and retain 50% of all collected prepaid fees for direct start-up costs. On that date and after, the seller may deduct and retain 3% of the collected fees. The seller is liable for remitting all collected prepaid fees.

A seller must remit to the Comptroller all prepaid wireless E 9-1-1 fees collected by the seller in the manner provided for the remitting of the State’s sales and use tax. A seller may demonstrate that a sale is not a retail transaction in a manner established by the Comptroller that is substantially similar to the procedures for demonstrating a resale for exemption from the sales and use tax. The Comptroller must deposit all remitted fees into the 9-1-1 Trust Fund within 30 days of receipt. The audit and appeal procedures established for the sales and use tax apply.

A seller that is not a provider of prepaid wireless telecommunications service is not liable for damages in connection with (1) the provision of, or failure of 9-1-1 or E 9-1-1 service; (2) identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access either service; or (3) the provision of any lawful assistance to any investigative or law enforcement officer.

Providers and sellers of prepaid wireless telecommunications service have the same immunity from liability for transmission failures as that approved by the Public Service Commission for local exchange telephone companies that are subject to regulation by the commission under the Public Utilities Article.

A tax, fee, surcharge, or other charge may not be imposed by the State, any political subdivision of the State, or any intergovernmental agency, for E 9-1-1 funding purposes, on any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

The bill requires the Comptroller to adopt regulations to carry out the provisions of the bill.

Money collected from the prepaid wireless E 9-1-1 fee may be used as follows:

- 25% to reimburse counties for the cost of enhancing a 9-1-1 system and to pay contractors; and
- 75% for use by the counties for maintenance and operations costs for 9-1-1 systems.

**Current Law:** The Emergency Number Systems Board was established by Chapter 730 of 1979. It coordinates installation and enhancement of county 9-1-1 emergency telephone number services systems. The board issues guidelines and determines review procedures to approve or disapprove county plans for these systems and sets criteria for reimbursing counties from the original 9-1-1 Trust Fund and from ongoing funds, and provides for audit of trust fund accounts.

Prepaid wireless telecommunication services do not now collect 9-1-1 surcharges or contribute to the trust fund.

**Background:** The 9-1-1 Trust Fund, which is administered by DPSCS, includes revenue from both a State and local surcharge that is assessed per bill for wired and wireless service. Revenue from the State fee is distributed to the Maryland counties at the discretion of the Emergency Number Systems Board in response to county 9-1-1 system enhancement requests.

Federal legislation enacted in 2008 prohibits states from receiving any federal 9-1-1-related grant funding if 9-1-1 fee revenues were used for purposes other than those defined as an eligible expense in State and federal law. According to the federal legislation, eligible expenses for the 9-1-1 fees can include emergency services Internet protocol networks, which are defined as engineered, managed networks that are intended

to be multipurpose, supporting public safety communications services, in addition to 9-1-1.

Prepaid wireless service is a growing segment of the overall consumer wireless service. A prepaid wireless telephone plan is often less expensive than the traditional, monthly billed cell phone plans with unlimited calls. According to DPSCS, other states have or are currently considering a similar “point-of-service” model for collecting emergency number service fees. DPSCS indicates that this model is supported by the National Emergency Number Association, the wireless industry, and several retail outlets including Wal-Mart.

The fiscal 2013 budget allowance shows special fund revenues and expenditures for the 9-1-1 Emergency Number Systems of \$57.3 million.

**State Fiscal Effect:** DPSCS estimates that this bill will generate \$3,125,000 in special fund revenue in fiscal 2013, which reflects the bill’s July 1, 2012 effective date as well as sellers’ ability to retain 50% of all collected prepaid fees for direct start-up costs until December 28, 2012. Of that amount, \$875,000 will be retained by the 9-1-1 Trust Fund and \$2,250,000 will be distributed to the counties and Baltimore City in varying amounts. Annualized, and assuming a relatively constant rate of return, beginning in fiscal 2014, the bill will generate \$4.0 million annually in revenue, with \$1.0 million being retained by the 9-1-1 Trust Fund and \$3.0 million being distributed to the counties and Baltimore City in varying amounts.

According to the Comptroller, this prepaid wireless E 9-1-1 fee would be treated as a new tax type in the SMART income tax return processing and imaging systems. The reprogramming and modifications to the SMART system resulting from the bill are estimated to cost about \$187,200 in fiscal 2013 only. In addition, mailing costs associated with notification of the new tax type to all 130,000 sales and use accounts in the State are estimated at an additional \$76,050 in fiscal 2013. Accordingly, total one-time new expenditures for the Comptroller in fiscal 2013 are estimated at \$263,250.

**Local Fiscal Effect:** Under the bill, Baltimore City and the counties will share in distributions from the new revenue generated by the bill. The additional revenue is estimated to total \$2.25 million in fiscal 2013 and \$3.0 million annually thereafter. This revenue can be used by local governments to maintain and enhance local 9-1-1 systems.

**Small Business Effect:** All businesses currently selling prepaid telecommunication devices, or who intend to sell such devices at a later date, will be required to establish a system for the collection and remittance of the surcharge created by the bill. This may involve some minimal costs. However, because businesses are allowed to deduct and retain 50% of all collected prepaid fees for direct start-up costs until December 28, 2012,

and to deduct and retain 3% of the collected fees after that date, any such costs are anticipated to be largely offset.

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### **Additional Information**

**Prior Introductions:** HB 1145 of 2011, a similar bill, received an unfavorable report from the Health and Government Operations Committee.

**Cross File:** None.

**Information Source(s):** Office of People's Counsel, Department of Public Safety and Correctional Services, Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2012  
ncs/hlb

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public Safety – 9-1-1 Emergency Telephone Systems – Prepaid Service Collection of Surcharge

BILL NUMBER: HB 779

PREPARED BY: Department of Public Safety and Correctional Services

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

Small business will need to implement a process to collect the 9-1-1 surcharge at the time of sale for any pre-paid wireless phone service (minutes) or pre-paid wireless communication device. In a similar fashion to the State's sales tax, retailer will need to remit and clearly identify 9-1-1 surcharge collections to the Office of the Comptroller on a monthly basis. Since the process of collecting sales tax is already in place, the implementation costs by small business for the collection of this similar 9-1-1 surcharge at the time of sale should be minimal. Once the pre-paid 9-1-1 surcharge collection methodology is implemented, the effect on small business would be negligible. **Small Business will be permitted to retain 2% of the pre-paid 9-1-1 surcharge collections to offset any implementation or recurring costs associated with this legislation.**