

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 745
 Finance

(Senator Middleton)

Health and Government Operations

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

This 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. Prepaid wireless E 9-1-1 fees are paid into the 9-1-1 Trust Fund and used for specified purposes.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the 9-1-1 Trust Fund increase by \$2.0 million in FY 2014, reflecting the retention of 50% of fees by sellers until December 28, 2013. Out-year estimates reflect the decreased retention of fees by sellers and growth in prepaid phone purchases. General fund expenditures for the Comptroller’s Office increase by \$263,300 in FY 2014 for one-time computer programming modifications and mailing costs to all sales and use tax accounts.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$2,000,000	\$4,000,000	\$4,080,000	\$4,160,000	\$4,240,000
GF Expenditure	\$263,300	\$0	\$0	\$0	\$0
SF Expenditure	\$2,000,000	\$4,000,000	\$4,080,000	\$4,160,000	\$4,240,000
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 revenues from the 9-1-1 Trust Fund increase by \$1.5 million in FY 2014, by \$3.0 million in FY 2015, and by over \$3.0 million annually thereafter, varying by jurisdiction.

Small Business Effect: Minimal.

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. The 60-cent surcharge is not subject to the State’s sales and use tax.

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, 2013, 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, prorated on the basis of the total fees collected in each county.

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 the Department of Public Safety and Correctional Services (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, 26 states and the District of Columbia have enacted a similar retail point-of-sale (POS) model for collecting prepaid wireless service fees. The POS model is supported by the National Emergency Number Association, the wireless industry, and several retail outlets (including Walmart). In July 2009, the National Conference of State Legislatures (NCSL) endorsed the POS collection method for prepaid wireless 9-1-1 fees.

Based on current Federal Communications Commission data for Maryland, there are about 5.3 million cell phone subscribers in the State. Of that number, 22% are estimated by the industry to be prepaid phones. By June 2013, the adjusted number of prepaid subscribers in Maryland is estimated to be about 937,200. However, because not every prepaid user is expected to recharge a prepaid phone monthly, the average revenue expected to be generated from all prepaid phones is less than 60 cents.

The Governor's proposed fiscal 2014 budget assumes special fund revenues and expenditures for the 9-1-1 Emergency Number Systems of \$57.4 million.

State Fiscal Effect: Based on actual experiences from other states and information provided by DPSCS, the bill generates approximately \$2.0 million in special fund revenue in fiscal 2014, which reflects the bill's July 1, 2013 effective date as well as sellers' ability to retain 50% of all collected prepaid fees for direct start-up costs until December 28, 2013. Of that amount, \$500,000 is retained by the 9-1-1 Trust Fund for use in accordance with current law, and \$1.5 million is distributed to the counties and Baltimore City in varying amounts. Annualized, and assuming a growth rate of about 2%, the bill generates approximately \$4.0 million in special fund revenue in fiscal 2014, with \$1.0 million retained by the 9-1-1 Trust Fund for use in accordance with current law and \$3.0 million distributed to the counties and Baltimore City in varying amounts. By fiscal 2018, the bill generates about \$4.2 million in revenue, with about \$1.1 million retained by the 9-1-1 Trust Fund for use in accordance with current law and about \$3.2 million distributed to the counties and Baltimore City.

According to the Comptroller, the 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 2014 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 general fund expenditures for the Comptroller in fiscal 2014 are estimated at \$263,250.

Local Fiscal Effect: Under the bill, Baltimore City and the counties share in distributions from the revenue generated by the fee. The additional grant revenue from the 9-1-1 Trust Fund is estimated to total \$1.5 million in fiscal 2014, \$3.0 million in 2015 (the first full year), and nearly \$3.2 million by fiscal 2018 – representing an annual growth rate of about 2%. This additional grant 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, are 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, 2013, and to deduct and retain 3% of the collected fees after that date, any such costs are anticipated to be largely offset.

Additional Information

Prior Introductions: HB 779 of 2012 received a hearing by the Health and Government Operations Committee, but no further action was taken. HB 1145 of 2011, a similar bill, received an unfavorable report from the Health and Government Operations Committee.

Cross File: None.

Information Source(s): Comptroller's Office, Department of Public Safety and Correctional Services, Public Service Commission, Verizon Communications, Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2013
ncs/lgc Revised - Senate Third Reader - March 19, 2013

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510