

2 **SHB 1126** - CONF REPT
3 By Conference Committee

4 ADOPTED 3/11/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that:

8 (1) The state enhanced 911 excise tax imposed at the current rate
9 of twenty cents per switched access line per month generates adequate
10 tax revenues to enhance the 911 telephone system for switched access
11 lines state-wide by December 31, 1998, as mandated in RCW 38.52.510;

12 (2) The tax revenues generated from the state enhanced 911 excise
13 tax when the tax rate decreases to a maximum of ten cents per switched
14 access line on January 1, 1999, will not be adequate to fund the
15 long-term operation and equipment replacement costs for the enhanced
16 911 telephone systems in the counties or multicounty regions that
17 receive financial assistance from the state enhanced 911 office;

18 (3) Some counties or multicounty regions will need financial
19 assistance from the state enhanced 911 office to implement and maintain
20 enhanced 911 because the tax revenue generated from the county enhanced
21 911 excise tax is not adequate;

22 (4) Counties with populations of less than seventy-five thousand
23 will need salary assistance to create multicounty regions and counties
24 with populations of seventy-five thousand or more, if requested by
25 smaller counties, will need technical assistance and incentives to
26 provide multicounty services; and

27 (5) Counties should not request state financial assistance for
28 implementation and maintenance of enhanced 911 for switched access
29 lines unless the county has imposed the maximum enhanced 911 tax
30 authorized in RCW 82.14B.030.

31 **Sec. 2.** RCW 82.14B.020 and 1994 c 96 s 2 are each amended to read
32 as follows:

33 As used in this chapter:

34 (1) "Emergency services communication system" means a multicounty,
35 county-wide, or district-wide radio or landline communications network,

1 including an enhanced 911 telephone system, which provides rapid public
2 access for coordinated dispatching of services, personnel, equipment,
3 and facilities for police, fire, medical, or other emergency services.

4 (2) "Enhanced 911 telephone system" means a public telephone system
5 consisting of a network, data base, and on-premises equipment that is
6 accessed by dialing 911 and that enables reporting police, fire,
7 medical, or other emergency situations to a public safety answering
8 point. The system includes the capability to selectively route
9 incoming 911 calls to the appropriate public safety answering point
10 that operates in a defined 911 service area and the capability to
11 automatically display the name, address, and telephone number of
12 incoming 911 calls at the appropriate public safety answering point.

13 (3) "Switched access line" means the telephone service line which
14 connects a subscriber's main telephone(s) or equivalent main
15 telephone(s) to the local exchange company's switching office.

16 (4) "Local exchange company" has the meaning ascribed to it in RCW
17 80.04.010.

18 (5) "Radio access line" means the telephone number assigned to or
19 used by (~~an end user~~) a subscriber for two-way local wireless voice
20 service available to the public for hire from a radio communications
21 service company. Radio access lines include, but are not limited to,
22 radio-telephone communications lines used in cellular telephone
23 service, personal communications services, and network radio access
24 lines, or their functional and competitive equivalent. Radio access
25 lines do not include lines that provide access to one-way signaling
26 service, such as paging service, or to communications channels suitable
27 only for data transmission, or to nonlocal radio access line service,
28 such as wireless roaming service, or to a private telecommunications
29 system.

30 (6) "Radio communications service company" has the meaning ascribed
31 to it in RCW 80.04.010.

32 (7) "Private telecommunications system" has the meaning ascribed to
33 it in RCW 80.04.010.

34 (8) "Subscriber" means the retail purchaser of telephone service as
35 telephone service is defined in RCW 82.04.065(3).

36 **Sec. 3.** RCW 82.14B.030 and 1994 c 96 s 3 are each amended to read
37 as follows:

1 (1) The legislative authority of a county may impose a county
2 enhanced 911 excise tax on the use of switched access lines in an
3 amount not exceeding fifty cents per month for each switched access
4 line. The amount of tax shall be uniform for each switched access
5 line. Each county shall provide notice of such tax to all local
6 exchange companies serving in the county at least sixty days in advance
7 of the date on which the first payment is due.

8 (2) The legislative authority of a county may also impose a county
9 911 excise tax on the use of radio access lines located within the
10 county in an amount not exceeding twenty-five cents per month for each
11 radio access line. The amount of tax shall be uniform for each radio
12 access line. The county shall provide notice of such tax to all radio
13 communications service companies serving in the county at least sixty
14 days in advance of the date on which the first payment is due. Any
15 county imposing this tax shall include in its ordinance a refund
16 mechanism whereby the amount of any tax ordered to be refunded by the
17 judgment of a court of record, or as a result of the resolution of any
18 appeal therefrom, shall be refunded to the radio communications service
19 company or local exchange company that collected the tax, and those
20 companies shall reimburse the ~~((users))~~ subscribers who paid the tax.
21 The ordinance shall further provide that to the extent the ~~((users))~~
22 subscribers who paid the tax cannot be identified or located, the tax
23 paid by those ~~((users))~~ subscribers shall be returned to the county.

24 (3) ~~((Beginning January 1, 1992,))~~ A state enhanced 911 excise tax
25 is imposed on all switched access lines in the state. ~~((For 1992, the
26 tax shall be set at a rate of twenty cents per month for each switched
27 access line. Until December 31, 1998,))~~ The amount of tax shall not
28 exceed twenty cents per month for each switched access line ~~((and
29 thereafter shall not exceed ten cents per month for each switched
30 access line))~~. The tax shall be uniform for each switched access line.
31 The tax imposed under this subsection shall be remitted to the
32 department of revenue by local exchange companies on a tax return
33 provided by the department. Tax proceeds shall be deposited by the
34 treasurer in the enhanced 911 account created in RCW 38.52.540.

35 (4) By August 31st of each year the state enhanced 911 coordinator
36 shall recommend the level for the next year of the state enhanced 911
37 excise tax, based on a systematic cost and revenue analysis, to the
38 utilities and transportation commission. The commission shall by the

1 following October 31st determine the level of the state enhanced 911
2 excise tax for the following year.

3 **Sec. 4.** RCW 82.14B.040 and 1994 c 96 s 4 are each amended to read
4 as follows:

5 The state enhanced 911 tax and the county enhanced 911 tax on
6 switched access lines shall be collected from the ((~~user~~)) subscriber
7 by the local exchange company providing the switched access line. The
8 county 911 tax on radio access lines shall be collected from the ((~~end~~
9 ~~user~~)) subscriber by the radio communications service company providing
10 the radio access line to the ((~~end-user~~)) subscriber. The amount of
11 the tax shall be stated separately on the billing statement which is
12 sent to the ((~~user~~)) subscriber.

13 **Sec. 5.** RCW 82.14B.060 and 1981 c 160 s 6 are each amended to read
14 as follows:

15 A county legislative authority imposing a tax under this chapter
16 shall establish by ordinance all necessary and appropriate procedures
17 for the administration and collection of the tax, which ordinance shall
18 provide for reimbursement to the telephone companies for actual costs
19 of administration and collection of the tax imposed. The ordinance
20 shall also provide that the due date for remittance of the tax
21 collected shall be ((~~thirty days following the collection month~~)) on or
22 before the last day of the month following the month in which the tax
23 liability accrues.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.14B RCW
25 to read as follows:

26 (1) The department of revenue shall administer and shall adopt such
27 rules as may be necessary to enforce and administer the state enhanced
28 911 excise tax imposed by this chapter. Chapter 82.32 RCW, with the
29 exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the
30 administration, collection, and enforcement of the state enhanced 911
31 excise tax.

32 (2) The state enhanced 911 excise tax imposed by this chapter,
33 along with reports and returns on forms prescribed by the department,
34 are due monthly on or before the last day of the month following the
35 month in which the tax liability accrues.

1 (3) The department of revenue may relieve any taxpayer or class of
2 taxpayers from the obligation of remitting monthly and may require the
3 return to cover other longer reporting periods, but in no event may
4 returns be filed for a period greater than one year. For these
5 taxpayers, tax payments are due on or before the last day of the month
6 next succeeding the end of the period covered by the return.

7 (4) The state enhanced 911 excise tax imposed by this chapter is in
8 addition to any taxes imposed upon the same persons under chapters
9 82.08 and 82.12 RCW.

10 NEW SECTION. Sec. 7. A new section is added to chapter 82.14B RCW
11 to read as follows:

12 (1) A local exchange company or radio communications service
13 company shall file tax returns on a cash receipts or accrual basis
14 according to which method of accounting is regularly employed in
15 keeping the books of the company. A local exchange company or radio
16 communications service company filing returns on a cash receipts basis
17 is not required to pay tax on debts that are deductible as worthless
18 for federal income tax purposes.

19 (2) A local exchange company or radio communications service
20 company is entitled to a credit or refund for state enhanced 911 excise
21 taxes previously paid on debts that are deductible as worthless for
22 federal income tax purposes.

23 NEW SECTION. Sec. 8. A new section is added to chapter 82.14B RCW
24 to read as follows:

25 The taxes imposed by this chapter do not apply to any activity that
26 the state or county is prohibited from taxing under the constitution of
27 this state or the constitution or laws of the United States.

28 NEW SECTION. Sec. 9. A new section is added to chapter 82.14B RCW
29 to read as follows:

30 (1) The state enhanced 911 excise tax imposed by this chapter must
31 be paid by the subscriber to the local exchange company providing the
32 switched access line, and each local exchange company shall collect
33 from the subscriber the full amount of the tax payable. The state
34 enhanced 911 excise tax required by this chapter to be collected by the
35 local exchange company is deemed to be held in trust by the local
36 exchange company until paid to the department. Any local exchange

1 company that appropriates or converts the tax collected to its own use
2 or to any use other than the payment of the tax to the extent that the
3 money collected is not available for payment on the due date as
4 prescribed in this chapter is guilty of a gross misdemeanor.

5 (2) If any local exchange company fails to collect the state
6 enhanced 911 excise tax or, after collecting the tax, fails to pay it
7 to the department in the manner prescribed by this chapter, whether
8 such failure is the result of its own act or the result of acts or
9 conditions beyond its control, the local exchange company is personally
10 liable to the state for the amount of the tax, unless the local
11 exchange company has taken from the buyer in good faith a properly
12 executed resale certificate under section 10 of this act.

13 (3) The amount of tax, until paid by the subscriber to the local
14 exchange company or to the department, constitutes a debt from the
15 subscriber to the local exchange company. Any local exchange company
16 that fails or refuses to collect the tax as required with intent to
17 violate the provisions of this chapter or to gain some advantage or
18 benefit, either direct or indirect, and any subscriber who refuses to
19 pay any tax due under this chapter is guilty of a misdemeanor. The
20 state enhanced 911 excise tax required by this chapter to be collected
21 by the local exchange company must be stated separately on the billing
22 statement that is sent to the subscriber.

23 (4) If a subscriber has failed to pay to the local exchange company
24 the state enhanced 911 excise tax imposed by this chapter and the local
25 exchange company has not paid the amount of the tax to the department,
26 the department may, in its discretion, proceed directly against the
27 subscriber for collection of the tax, in which case a penalty of ten
28 percent may be added to the amount of the tax for failure of the
29 subscriber to pay the tax to the local exchange company, regardless of
30 when the tax is collected by the department. For the sole purpose of
31 applying the various provisions of chapter 82.32 RCW, the last day of
32 the month following the tax period in which the tax liability accrued
33 is to be considered as the due date of the tax.

34 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.14B
35 RCW to read as follows:

36 (1) Unless a local exchange company has taken from the buyer a
37 resale certificate or equivalent document under RCW 82.04.470, the

1 burden of proving that a sale of the use of a switched access lines was
2 not a sale to a subscriber is upon the person who made the sale.

3 (2) If a local exchange company does not receive a resale
4 certificate at the time of the sale, have a resale certificate on file
5 at the time of the sale, or obtain a resale certificate from the buyer
6 within a reasonable time after the sale, the local exchange company
7 remains liable for the tax as provided in section 9 of this act, unless
8 the local exchange company can demonstrate facts and circumstances
9 according to rules adopted by the department of revenue that show the
10 sale was properly made without payment of the state enhanced 911 excise
11 tax.

12 (3) The penalty imposed by RCW 82.32.291 may not be assessed on
13 state enhanced 911 excise taxes due but not paid as a result of the
14 improper use of a resale certificate. This subsection does not
15 prohibit or restrict the application of other penalties authorized by
16 law.

17 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.14B
18 RCW to read as follows:

19 (1) Upon termination, dissolution, or abandonment of a corporate or
20 limited liability company business, any officer, member, manager, or
21 other person having control or supervision of state enhanced 911 excise
22 tax funds collected and held in trust under section 9 of this act, or
23 who is charged with the responsibility for the filing of returns or the
24 payment of state enhanced 911 excise tax funds collected and held in
25 trust under section 9 of this act, is personally liable for any unpaid
26 taxes and interest and penalties on those taxes, if such officer or
27 other person willfully fails to pay or to cause to be paid any state
28 enhanced 911 excise taxes due from the corporation under this chapter.
29 For the purposes of this section, any state enhanced 911 excise taxes
30 that have been paid but not collected are deductible from the state
31 enhanced 911 excise taxes collected but not paid. For purposes of this
32 subsection "willfully fails to pay or to cause to be paid" means that
33 the failure was the result of an intentional, conscious, and voluntary
34 course of action.

35 (2) The officer, member, manager, or other person is liable only
36 for taxes collected that became due during the period he or she had the
37 control, supervision, responsibility, or duty to act for the

1 corporation described in subsection (1) of this section, plus interest
2 and penalties on those taxes.

3 (3) Persons liable under subsection (1) of this section are exempt
4 from liability if nonpayment of the state enhanced 911 excise tax funds
5 held in trust is due to reasons beyond their control as determined by
6 the department by rule.

7 (4) Any person having been issued a notice of assessment under this
8 section is entitled to the appeal procedures under RCW 82.32.160
9 through 82.32.200.

10 (5) This section applies only if the department has determined that
11 there is no reasonable means of collecting the state enhanced 911
12 excise tax funds held in trust directly from the corporation.

13 (6) This section does not relieve the corporation or limited
14 liability company of other tax liabilities or otherwise impair other
15 tax collection remedies afforded by law.

16 (7) Collection authority and procedures prescribed in chapter 82.32
17 RCW apply to collections under this section.

18 **Sec. 12.** RCW 82.32.010 and 1984 c 204 s 26 are each amended to
19 read as follows:

20 The provisions of this chapter shall apply with respect to the
21 taxes imposed under chapters 82.04 through 82.14 RCW, under RCW
22 82.14B.030(3), under chapters 82.16 through 82.29A RCW of this title,
23 under chapter 84.33 RCW, and under other titles, chapters, and sections
24 in such manner and to such extent as indicated in each such title,
25 chapter, or section.

26 **Sec. 13.** RCW 82.32.105 and 1996 c 149 s 17 are each amended to
27 read as follows:

28 (1) If the department of revenue finds that the payment by a
29 taxpayer of a tax less than that properly due or the failure of a
30 taxpayer to pay any tax by the due date was the result of circumstances
31 beyond the control of the taxpayer, the department of revenue shall
32 waive or cancel any penalties imposed under this chapter with respect
33 to such tax.

34 (2) The department shall waive or cancel the penalty imposed under
35 RCW 82.32.090(1) when the circumstances under which the delinquency
36 occurred do not qualify for waiver or cancellation under subsection (1)
37 of this section if:

1 (a) The taxpayer requests the waiver for a tax return required to
2 be filed under RCW 82.32.045, section 6 of this act, 82.23B.020,
3 82.27.060, 82.29A.050, or 84.33.086; and

4 (b) The taxpayer has timely filed and remitted payment on all tax
5 returns due for that tax program for a period of twenty-four months
6 immediately preceding the period covered by the return for which the
7 waiver is being requested.

8 (3) The department shall waive or cancel interest imposed under
9 this chapter if:

10 (a) The failure to timely pay the tax was the direct result of
11 written instructions given the taxpayer by the department; or

12 (b) The extension of a due date for payment of an assessment of
13 deficiency was not at the request of the taxpayer and was for the sole
14 convenience of the department.

15 (4) The department of revenue shall adopt rules for the waiver or
16 cancellation of penalties and interest imposed by this chapter.

17 **Sec. 14.** RCW 38.52.540 and 1994 c 96 s 7 are each amended to read
18 as follows:

19 The enhanced 911 account is created in the state treasury. All
20 receipts from the state enhanced 911 excise tax imposed by RCW
21 82.14B.030 shall be deposited into the account. Moneys in the account
22 shall be used only to help implement and operate enhanced 911 state-
23 wide(~~(, and to conduct a study of the tax base and rate for the 911~~
24 ~~excise tax)). Moneys in the account may be used to provide salary
25 assistance on a temporary basis not to exceed three years to counties
26 with a population of less than seventy-five thousand that need
27 additional resources to cover unfunded costs that can be shown to
28 result from handling 911 calls. Moneys in the account may be used to
29 assist multicounty regions, including ongoing salary assistance for
30 multicounty regions consisting of counties with populations of less
31 than seventy-five thousand. However, funds shall not be distributed to
32 any county that has not imposed the maximum county enhanced 911 taxes
33 allowed under RCW 82.14B.030 (1) and (2). The state enhanced 911
34 coordinator, with the advice and assistance of the enhanced 911
35 advisory committee, shall specify by rule the purposes for which moneys
36 may be expended from this account.~~

1 NEW SECTION. **Sec. 15.** This act takes effect January 1, 1999,
2 except section 14 of this act which takes effect July 1, 1998."

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4 By Conference Committee

5 ADOPTED 3/11/98

6 On page 1, line 3 of the title, after "funding;" strike the
7 remainder of the title and insert "amending RCW 82.14B.020, 82.14B.030,
8 82.14B.040, 82.14B.060, 82.32.010, 82.32.105, and 38.52.540; adding new
9 sections to chapter 82.14B RCW; creating a new section; prescribing
10 penalties; and providing effective dates."

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