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HOUSE BILL 2595

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Morris, Anderson, Gombosky, Cox, Edwards, Nixon, Ogden, Santos, Delvin, Veloria, Conway, Cooper, Ruderman, Wood and Kagi

Read first time 01/22/2002. Referred to Committee on Finance.

1 AN ACT Relating to a state wireless enhanced 911 excise tax;  
2 amending RCW 38.52.010, 38.52.530, 38.52.540, 38.52.550, 82.14B.020,  
3 82.14B.030, 82.14B.040, 82.14B.042, 82.14B.061, and 82.14B.200; adding  
4 a new section to chapter 38.52 RCW; creating a new section; repealing  
5 RCW 38.52.560; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that statewide  
8 enhanced 911 has proven to be a lifesaving service and that routing a  
9 911 call to the appropriate public safety answering point with a  
10 display of the caller's identification and location should be available  
11 for all users of telecommunications services, regardless of the  
12 technology used to make and transmit the 911 call. The legislature  
13 also finds that it is in the best public interest to ensure that there  
14 is adequate ongoing funding to support enhanced 911 service.

15 **Sec. 2.** RCW 38.52.010 and 1997 c 49 s 1 are each amended to read  
16 as follows:

17 As used in this chapter:

1 (1) "Emergency management" or "comprehensive emergency management"  
2 means the preparation for and the carrying out of all emergency  
3 functions, other than functions for which the military forces are  
4 primarily responsible, to mitigate, prepare for, respond to, and  
5 recover from emergencies and disasters, and to aid victims suffering  
6 from injury or damage, resulting from disasters caused by all hazards,  
7 whether natural, technological, or human caused, and to provide support  
8 for search and rescue operations for persons and property in distress.  
9 However, "emergency management" or "comprehensive emergency management"  
10 does not mean preparation for emergency evacuation or relocation of  
11 residents in anticipation of nuclear attack.

12 (2) "Local organization for emergency services or management" means  
13 an organization created in accordance with the provisions of this  
14 chapter by state or local authority to perform local emergency  
15 management functions.

16 (3) "Political subdivision" means any county, city or town.

17 (4) "Emergency worker" means any person, including but not limited  
18 to an architect registered under chapter 18.08 RCW or a professional  
19 engineer registered under chapter 18.43 RCW, who is registered with a  
20 local emergency management organization or the department and holds an  
21 identification card issued by the local emergency management director  
22 or the department for the purpose of engaging in authorized emergency  
23 management activities or is an employee of the state of Washington or  
24 any political subdivision thereof who is called upon to perform  
25 emergency management activities.

26 (5) "Injury" as used in this chapter shall mean and include  
27 accidental injuries and/or occupational diseases arising out of  
28 emergency management activities.

29 (6)(a) "Emergency or disaster" as used in all sections of this  
30 chapter except RCW 38.52.430 shall mean an event or set of  
31 circumstances which: (I) Demands immediate action to preserve public  
32 health, protect life, protect public property, or to provide relief to  
33 any stricken community overtaken by such occurrences, or (ii) reaches  
34 such a dimension or degree of destructiveness as to warrant the  
35 governor declaring a state of emergency pursuant to RCW 43.06.010.

36 (b) "Emergency" as used in RCW 38.52.430 means an incident that  
37 requires a normal police, coroner, fire, rescue, emergency medical  
38 services, or utility response as a result of a violation of one of the  
39 statutes enumerated in RCW 38.52.430.

1 (7) "Search and rescue" means the acts of searching for, rescuing,  
2 or recovering by means of ground, marine, or air activity any person  
3 who becomes lost, injured, or is killed while outdoors or as a result  
4 of a natural, technological, or human caused disaster, including  
5 instances involving searches for downed aircraft when ground personnel  
6 are used. Nothing in this section shall affect appropriate activity by  
7 the department of transportation under chapter 47.68 RCW.

8 (8) "Executive head" and "executive heads" means the county  
9 executive in those charter counties with an elective office of county  
10 executive, however designated, and, in the case of other counties, the  
11 county legislative authority. In the case of cities and towns, it  
12 means the mayor in those cities and towns with mayor-council or  
13 commission forms of government, where the mayor is directly elected,  
14 and it means the city manager in those cities and towns with council  
15 manager forms of government. Cities and towns may also designate an  
16 executive head for the purposes of this chapter by ordinance.

17 (9) "Director" means the adjutant general.

18 (10) "Local director" means the director of a local organization of  
19 emergency management or emergency services.

20 (11) "Department" means the state military department.

21 (12) "Emergency response" as used in RCW 38.52.430 means a public  
22 agency's use of emergency services during an emergency or disaster as  
23 defined in subsection (6)(b) of this section.

24 (13) "Expense of an emergency response" as used in RCW 38.52.430  
25 means reasonable costs incurred by a public agency in reasonably making  
26 an appropriate emergency response to the incident, but shall only  
27 include those costs directly arising from the response to the  
28 particular incident. Reasonable costs shall include the costs of  
29 providing police, coroner, fire fighting, rescue, emergency medical  
30 services, or utility response at the scene of the incident, as well as  
31 the salaries of the personnel responding to the incident.

32 (14) "Public agency" means the state, and a city, county, municipal  
33 corporation, district, town, or public authority located, in whole or  
34 in part, within this state which provides or may provide fire fighting,  
35 police, ambulance, medical, or other emergency services.

36 (15) "Incident command system" means: (a) An all-hazards, on-scene  
37 functional management system that establishes common standards in  
38 organization, terminology, and procedures; provides a means (unified  
39 command) for the establishment of a common set of incident objectives

1 and strategies during multiagency/multijurisdiction operations while  
2 maintaining individual agency/jurisdiction authority, responsibility,  
3 and accountability; and is a component of the national interagency  
4 incident management system; or (b) an equivalent and compatible all-  
5 hazards, on-scene functional management system.

6 (16) "Radio communications service company" has the meaning  
7 ascribed to it in RCW 82.14B.020.

8 **Sec. 3.** RCW 38.52.530 and 2000 c 34 s 1 are each amended to read  
9 as follows:

10 The enhanced 911 advisory committee is created to advise and assist  
11 the state enhanced 911 coordinator in coordinating and facilitating the  
12 implementation and operation of enhanced 911 throughout the state. The  
13 director shall appoint members of the committee who represent diverse  
14 geographical areas of the state and include state residents who are  
15 members of the national emergency number association, the associated  
16 public communications officers Washington chapter, the Washington state  
17 fire chiefs association, the Washington association of sheriffs and  
18 police chiefs, the Washington state council of fire fighters, the  
19 Washington state council of police officers, the Washington ambulance  
20 association, the state fire protection policy board, the Washington  
21 fire commissioners association, the Washington state patrol, the  
22 association of Washington cities, the Washington state association of  
23 counties, the utilities and transportation commission or commission  
24 staff, and an equal number of representatives of large and small local  
25 exchange telephone companies and large and small radio communications  
26 service companies offering commercial mobile radio service in the  
27 state. This section expires December 31, 2006.

28 **Sec. 4.** RCW 38.52.540 and 2001 c 128 s 2 are each amended to read  
29 as follows:

30 (1) The enhanced 911 account is created in the state treasury. All  
31 receipts from the state enhanced 911 excise ((tax)) taxes imposed by  
32 RCW 82.14B.030 shall be deposited into the account. Moneys in the  
33 account shall be used only to support the statewide coordination and  
34 management of the enhanced 911 system, for the implementation of  
35 wireless enhanced 911 statewide, and to help supplement, within  
36 available funds, the operational costs of the system, including  
37 adequate funding of counties to enable implementation of wireless

1 enhanced 911 service and reimbursement of radio communications service  
2 companies for costs incurred in providing wireless enhanced 911 service  
3 pursuant to negotiated contracts between the counties or their agents  
4 and the radio communications service companies.

5 (2) Funds generated by the enhanced 911 excise tax imposed by RCW  
6 82.14B.030(3) shall not be distributed to any county that has not  
7 imposed the maximum county enhanced 911 ((taxes)) tax allowed under RCW  
8 82.14B.030(1) ((and (2))). Funds generated by the enhanced 911 excise  
9 tax imposed by RCW 82.14B.030(4) shall not be distributed to any county  
10 that has not imposed the maximum county enhanced 911 tax allowed under  
11 RCW 82.14B.030(2).

12 (3) The state enhanced 911 coordinator, with the advice and  
13 assistance of the enhanced 911 advisory committee, is authorized to  
14 enter into statewide agreements to improve the efficiency of enhanced  
15 911 services for all counties and shall specify by rule the additional  
16 purposes for which moneys, if available, may be expended from this  
17 account.

18 **Sec. 5.** RCW 38.52.550 and 1991 c 329 s 7 are each amended to read  
19 as follows:

20 A telecommunications company, or radio communications service  
21 company, providing emergency communications systems or services or a  
22 business or individual providing data base information to emergency  
23 communication system personnel shall not be liable for civil damages  
24 caused by an act or omission of the company, business, or individual in  
25 the:

26 (1) Good faith release of information not in the public record,  
27 including unpublished or unlisted subscriber information to emergency  
28 service providers responding to calls placed to a 911 or enhanced 911  
29 emergency service; or

30 (2) Design, development, installation, maintenance, or provision of  
31 consolidated 911 or enhanced 911 emergency communication systems or  
32 services other than an act or omission constituting gross negligence or  
33 wanton or willful misconduct.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 38.52 RCW  
35 to read as follows:

36 The state enhanced 911 coordinator, with the advice and assistance  
37 of the enhanced 911 advisory committee, shall set nondiscriminatory,

1 uniform technical and operational standards consistent with the rules  
2 of the federal communications commission for the transmission of 911  
3 calls from radio communications service companies to enhanced 911  
4 emergency communications systems. These standards must not exceed the  
5 requirements set by the federal communications commission. The  
6 authority given to the state enhanced 911 coordinator in this section  
7 is limited to setting standards as set forth in this section and does  
8 not constitute authority to regulate radio communications service  
9 companies.

10 **Sec. 7.** RCW 82.14B.020 and 1998 c 304 s 2 are each amended to read  
11 as follows:

12 As used in this chapter:

13 (1) "Emergency services communication system" means a multicounty,  
14 countywide, or districtwide radio or landline communications network,  
15 including an enhanced 911 telephone system, which provides rapid public  
16 access for coordinated dispatching of services, personnel, equipment,  
17 and facilities for police, fire, medical, or other emergency services.

18 (2) "Enhanced 911 telephone system" means a public telephone system  
19 consisting of a network, data base, and on-premises equipment that is  
20 accessed by dialing 911 and that enables reporting police, fire,  
21 medical, or other emergency situations to a public safety answering  
22 point. The system includes the capability to selectively route  
23 incoming 911 calls to the appropriate public safety answering point  
24 that operates in a defined 911 service area and the capability to  
25 automatically display the name, address, and telephone number of  
26 incoming 911 calls at the appropriate public safety answering point.

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

30 (4) "Local exchange company" has the meaning ascribed to it in RCW  
31 80.04.010.

32 (5) "Radio access line" means the telephone number assigned to or  
33 used by a subscriber for two-way local wireless voice service available  
34 to the public for hire from a radio communications service company.  
35 Radio access lines include, but are not limited to, radio-telephone  
36 communications lines used in cellular telephone service, personal  
37 communications services, and network radio access lines, or their  
38 functional and competitive equivalent. Radio access lines do not

1 include lines that provide access to one-way signaling service, such as  
2 paging service, or to communications channels suitable only for data  
3 transmission, or to nonlocal radio access line service, such as  
4 wireless roaming service, or to a private telecommunications system.

5 (6) "Radio communications service company" has the meaning ascribed  
6 to it in RCW 80.04.010, except that it does not include radio paging  
7 providers. It does include those persons or entities that provide  
8 commercial mobile radio services, as defined by 47 U.S.C. Sec.  
9 332(d)(1), and both facilities-based and nonfacilities-based resellers.

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

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

14 (9) "Place of primary use" has the meaning ascribed to it in the  
15 federal mobile telecommunications sourcing act, P.L. 106-252.

16 **Sec. 8.** RCW 82.14B.030 and 1998 c 304 s 3 are each amended to read  
17 as follows:

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

25 (2) The legislative authority of a county may also impose a county  
26 enhanced 911 excise tax on the use of radio access lines whose place of  
27 primary use is located within the county in an amount not exceeding  
28 ~~((twenty-five))~~ fifty cents per month for each radio access line. The  
29 amount of tax shall be uniform for each radio access line. The county  
30 shall provide notice of such tax to all radio communications service  
31 companies serving in the county at least sixty days in advance of the  
32 date on which the first payment is due. Any county imposing this tax  
33 shall include in its ordinance a refund mechanism whereby the amount of  
34 any tax ordered to be refunded by the judgment of a court of record, or  
35 as a result of the resolution of any appeal therefrom, shall be  
36 refunded to the radio communications service company or local exchange  
37 company that collected the tax, and those companies shall reimburse the  
38 subscribers who paid the tax. The ordinance shall further provide that

1 to the extent the subscribers who paid the tax cannot be identified or  
2 located, the tax paid by those subscribers shall be returned to the  
3 county.

4 (3) A state enhanced 911 excise tax is imposed on all switched  
5 access lines in the state. The amount of tax shall not exceed twenty  
6 cents per month for each switched access line. The tax shall be  
7 uniform for each switched access line. The tax imposed under this  
8 subsection shall be remitted to the department of revenue by local  
9 exchange companies on a tax return provided by the department. Tax  
10 proceeds shall be deposited by the treasurer in the enhanced 911  
11 account created in RCW 38.52.540.

12 (4) A state enhanced 911 excise tax is imposed on all radio access  
13 lines whose place of primary use is located within the state in an  
14 amount of twenty cents per month for each radio access line. The tax  
15 shall be uniform for each radio access line. The tax imposed under  
16 this section shall be remitted to the department of revenue by radio  
17 communications service companies, including those companies that resell  
18 radio access lines, on a tax return provided by the department. Tax  
19 proceeds shall be deposited by the treasurer in the enhanced 911  
20 account created in RCW 38.52.540. The tax imposed under this section  
21 is not subject to the state sales and use tax or any local tax.

22 (5) By August 31st of each year the state enhanced 911 coordinator  
23 shall recommend the level for the next year of the state enhanced 911  
24 excise tax imposed by subsection (3) of this section, based on a  
25 systematic cost and revenue analysis, to the utilities and  
26 transportation commission. The commission shall by the following  
27 October 31st determine the level of the state enhanced 911 excise tax  
28 for the following year.

29 **Sec. 9.** RCW 82.14B.040 and 1998 c 304 s 4 are each amended to read  
30 as follows:

31 The state enhanced 911 tax and the county enhanced 911 tax on  
32 switched access lines shall be collected from the subscriber by the  
33 local exchange company providing the switched access line. The state  
34 enhanced 911 tax and the county 911 tax on radio access lines shall be  
35 collected from the subscriber by the radio communications service  
36 company providing the radio access line to the subscriber. The amount  
37 of the tax shall be stated separately on the billing statement which is  
38 sent to the subscriber.



1       **Sec. 10.** RCW 82.14B.042 and 2000 c 106 s 2 are each amended to  
2 read as follows:

3       (1) The state enhanced 911 excise (~~((tax))~~) taxes imposed by this  
4 chapter must be paid by the subscriber to the local exchange company  
5 providing the switched access line or the radio communications service  
6 company providing the radio access line, and each local exchange  
7 company and each radio communications service company shall collect  
8 from the subscriber the full amount of the (~~((tax))~~) taxes payable. The  
9 state enhanced 911 excise (~~((tax))~~) taxes required by this chapter to be  
10 collected by the local exchange company (~~((is))~~) or the radio  
11 communications service company are deemed to be held in trust by the  
12 local exchange company or the radio communications service company  
13 until paid to the department. Any local exchange company or radio  
14 communications service company that appropriates or converts the tax  
15 collected to its own use or to any use other than the payment of the  
16 tax to the extent that the money collected is not available for payment  
17 on the due date as prescribed in this chapter is guilty of a gross  
18 misdemeanor.

19       (2) If any local exchange company or radio communications service  
20 company fails to collect the state enhanced 911 excise tax or, after  
21 collecting the tax, fails to pay it to the department in the manner  
22 prescribed by this chapter, whether such failure is the result of its  
23 own act or the result of acts or conditions beyond its control, the  
24 local exchange company or the radio communications service company is  
25 personally liable to the state for the amount of the tax, unless the  
26 local exchange company or the radio communications service company has  
27 taken from the buyer in good faith a properly executed resale  
28 certificate under RCW 82.14B.200.

29       (3) The amount of tax, until paid by the subscriber to the local  
30 exchange company, the radio communications service company, or to the  
31 department, constitutes a debt from the subscriber to the local  
32 exchange company or the radio communications service company. Any  
33 local exchange company or radio communications service company that  
34 fails or refuses to collect the tax as required with intent to violate  
35 the provisions of this chapter or to gain some advantage or benefit,  
36 either direct or indirect, and any subscriber who refuses to pay any  
37 tax due under this chapter is guilty of a misdemeanor. The state  
38 enhanced 911 excise (~~((tax))~~) taxes required by this chapter to be  
39 collected by the local exchange company or the radio communications

1 service company must be stated separately on the billing statement that  
2 is sent to the subscriber.

3 (4) If a subscriber has failed to pay to the local exchange company  
4 or the radio communications service company the state enhanced 911  
5 excise (~~((tax))~~) taxes imposed by this chapter and the local exchange  
6 company or the radio communications service company has not paid the  
7 amount of the tax to the department, the department may, in its  
8 discretion, proceed directly against the subscriber for collection of  
9 the tax, in which case a penalty of ten percent may be added to the  
10 amount of the tax for failure of the subscriber to pay the tax to the  
11 local exchange company or the radio communications service company,  
12 regardless of when the tax is collected by the department. Tax under  
13 this chapter is due as provided under RCW 82.14B.061.

14 **Sec. 11.** RCW 82.14B.061 and 2000 c 106 s 3 are each amended to  
15 read as follows:

16 (1) The department of revenue shall administer and shall adopt such  
17 rules as may be necessary to enforce and administer the state enhanced  
18 911 excise (~~((tax))~~) taxes imposed by this chapter. Chapter 82.32 RCW,  
19 with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies  
20 to the administration, collection, and enforcement of the state  
21 enhanced 911 excise (~~((tax))~~) taxes.

22 (2) The state enhanced 911 excise (~~((tax))~~) taxes imposed by this  
23 chapter, along with reports and returns on forms prescribed by the  
24 department, are due at the same time the taxpayer reports other taxes  
25 under RCW 82.32.045. If no other taxes are reported under RCW  
26 82.32.045, the taxpayer shall remit tax on an annual basis in  
27 accordance with RCW 82.32.045.

28 (3) The department of revenue may relieve any taxpayer or class of  
29 taxpayers from the obligation of remitting monthly and may require the  
30 return to cover other longer reporting periods, but in no event may  
31 returns be filed for a period greater than one year.

32 (4) The state enhanced 911 excise (~~((tax))~~) taxes imposed by this  
33 chapter (~~((is))~~) are in addition to any taxes imposed upon the same  
34 persons under chapters 82.08 and 82.12 RCW.

35 **Sec. 12.** RCW 82.14B.200 and 1998 c 304 s 10 are each amended to  
36 read as follows:

1 (1) Unless a local exchange company or a radio communications  
2 service company has taken from the buyer a resale certificate or  
3 equivalent document under RCW 82.04.470, the burden of proving that a  
4 sale of the use of a switched access (~~(lines-[line])~~) line or radio  
5 access line was not a sale to a subscriber is upon the person who made  
6 the sale.

7 (2) If a local exchange company or a radio communications service  
8 company does not receive a resale certificate at the time of the sale,  
9 have a resale certificate on file at the time of the sale, or obtain a  
10 resale certificate from the buyer within a reasonable time after the  
11 sale, the local exchange company or the radio communications service  
12 company remains liable for the tax as provided in RCW 82.14B.042,  
13 unless the local exchange company or the radio communications service  
14 company can demonstrate facts and circumstances according to rules  
15 adopted by the department of revenue that show the sale was properly  
16 made without payment of the state enhanced 911 excise tax.

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

22 NEW SECTION. Sec. 13. RCW 38.52.560 (Automatic number  
23 identification--Wireless two-way telecommunications service) and 1994  
24 c 96 s 5 are each repealed.

25 NEW SECTION. Sec. 14. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

29 NEW SECTION. Sec. 15. This act takes effect January 1, 2003.

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