

# SENATE BILL REPORT

## SB 5422

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As of January 30, 2013

**Title:** An act relating to telecommunications tax parity.

**Brief Description:** Concerning telecommunications tax parity.

**Sponsors:** Senator Ericksen.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications:

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** William Bridges (786-7416)

**Background:** Enhanced 911 (E-911). E-911 is a service that displays the caller's phone number and location at a 911 call center. E-911 services are funded by county and state excise taxes. Counties may impose an E-911 excise tax up to \$0.70 per month for each switched access line, radio access line, and internet phone line, also called a Voice over Internet Protocol (VoIP) service line. The state may impose an E-911 excise tax on the same services but not exceeding \$0.25 per month.

In October 2010, the Washington Supreme Court held that the state E-911 excise tax must be paid on prepaid wireless phone service, for example, Tracfone, and that the company providing the service is ultimately responsible for paying the tax if it is not collected from the subscriber.

Sales Tax Exemption for Residential Telephone Lines. Retail sales and use taxes are imposed by the state, most cities, and all counties. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3 percent, depending on the location.

In 1983 state and local retail sales taxes were extended to telephone services; however, an exemption was provided for individuals subscribing to a residential class of telephone service. The exemption only applies to the local service portion of a residential line. The Department of Revenue (DOR) has interpreted this exemption to apply only to residential telephone service that is regulated by the Washington Utilities and Transportation Commission (UTC). The UTC regulates the rates and services of telephone companies

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providing wireline telephone services in Washington; however, the UTC does not regulate cable services, cellular phone services, VoIP services, or internet access services.

In April 2011, the Thurston County Superior Court ruled that a certain wireless company's sales of cellular telephone services to non-business customers qualified for the residential telephone service exemption. A confidential settlement was reached between the company and DOR and the order was subsequently vacated.

Washington Telephone Assistance Program (WTAP). Created in 1987, WTAP provides discounted wireline telephone services to low-income residents of the state. The program is operated by the Department of Social and Health Services (DSHS) and UTC, and provides a reduced monthly charge for basic telephone service, discounts on connection fees, waivers of deposits for local service, and community voicemail. The program is currently funded by a monthly \$0.14 excise tax on all wireline telephones in the state. The tax does not apply to companies providing wireless and VoIP telecommunications services; however, at least one VoIP provider in the state voluntarily pays the tax. The UTC determines the tax rate necessary to fund the program, and DSHS collects the tax.

Telecommunications Relay Service (TRS). Created in 1990, TRS is required by the federal Americans with Disabilities Act, and it enables telephone conversations between people with and without hearing or speech disabilities. The service is currently funded by a monthly \$0.17 excise tax on all wireline telephones in the state. The tax does not apply to companies providing wireless and VoIP telecommunications services; however at least one VoIP provider in the state voluntarily pays the tax. The UTC determines the tax rate necessary to fund the program, and DSHS collects the tax.

Federal Lifeline and Link Up Programs. Lifeline provides discounted phone service for qualifying low-income consumers to ensure access to wireline telephones and pre-paid wireless service plans. Link Up provides discounts for installing wireline telephone service for qualifying low-income households in tribal lands. Lifeline and Link Up are funded by the federal Universal Service Fund, in which telecommunications service providers, for example, wireline, wireless, and VoIP must contribute a percentage of their interstate and international end-user revenues.

**Summary of Bill:** Imposing E911 Taxes on Prepaid Wireless Telecommunications Service at the Point of Sale. State and county E911 excise taxes must be collected by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state at the point of sale. When practicable, the amount of the tax must be disclosed on an invoice, receipt, or other similar document. When a separate disclosure is not practicable, the seller may prominently display a sign notifying consumers of the tax. Sellers of prepaid wireless telecommunications service are subject to the same administrative sales-tax provisions as companies providing wireline, wireless, and VoIP telecommunications services.

Repealing the Sales Tax Exemption for Residential Telephone Lines and Pay Phones. The state and local sales tax exemptions for individuals subscribing to a residential class of telephone service are repealed. The state and local sales tax exemptions for coin-operated telephone service are also repealed.

Funding WTAP and TRS from the State General Fund. The WTAP and TRS excise taxes are eliminated, and the programs are to be funded by biennial general fund appropriations.

Definitions. Various terms are defined, such as prepaid wireless telecommunications service, which means a telecommunications service that provides right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Telecommunication companies are cutting each others' throats in the market place, but they are united in supporting this bill, which is the equivalent of achieving peace in the Middle East. There is a narrow window to pass this bill because of the looming legal reasoning of the Sprint case. If the sales tax exemption is ultimately applied to all wireless carriers, the state and local governments will face having to refund sales tax collections to wireless companies, which could total around \$250 million per year for four years. The funding of laudable social programs through excise taxes on wireline phones is a legacy of an era when there were monopoly carriers with defined service territories. That era has ended and it is unfair to tax the same communication services differently just because they use different technologies. Tax revenues based on wirelines, like the ones supporting WTAP and TRS, are declining as consumers migrate to other technologies, such as wireless; therefore, it is prudent to start funding these programs from the general fund. E911 tax revenue could increase with point-of-sale tax collections for prepaid wireless because that is the fastest growing segment of the wireless market, because it will reduce the leakage that occurs when consumers purchase prepaid cards in the state but use their phones outside the state, and because wireless companies that do pay the tax use the wholesale, not retail, price to calculate the tax. Because prepaid wireless cards are sold nationally in bulk, it is impossible to know where the cards will be used in order to charge a local E911 tax at the wholesale point.

CON: Not only would point-of-sale collection of the E911 tax be a great burden for the 46,000 small retailers in the state; a proposal to do so in this bill will require a two-thirds vote. It would be far more cost-effective to focus on collecting the E911 tax on a smaller group, such as the wireless carriers. According to the DOR's fiscal note, shifting E911 tax collection to the retailers will decrease tax collections.

OTHER: There are concerns about replacing the adequate, predictable, stable, and dedicated WTAP and TRS taxes with legislative appropriations. A new dedicated funding source is desired for critical services such as 211, which connects vulnerable persons, especially in rural areas, with social service providers.

**Persons Testifying:** PRO: Bob Bass, AT&T Wireless; Jim Blundell, T-Mobile; Carl Gipson, Frontier; John Cmelak, Milt Doumit, Verizon; Victoria Lincoln, Assn. of WA Cities; Ron Main, Broadband Communications Assn. of WA; Anne Perkins, Sprint; Carolyn Robertson, City of Auburn; KD Seeley, Assn. of Public-Safety Communications Officials; Tom Walker, CenturyLink.

CON: T.K. Bentler, WA Assn. of Neighborhood Stores; Amy Brackenbury, WA Food Industry Assn.; Mark Johnson, WA Retail Assn.

OTHER: Jennifer Brandon, Springwire, Community Voice Mail; Seth Dawson, WA Assn. of Community Action Agencies; Nick Federici, Milissa Smith, WIN 211 Network; Drew Shirk, DOR.