

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** William R. Janis

2. **Bill Number** HB 754

3. **Committee** Senate Commerce and Labor

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

4. **Title** Prepaid Wireless E-911 Fees

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

This bill would repeal the current E-911 fee on prepaid wireless service and would impose a new prepaid wireless E-911 fee of \$0.50 on each retail purchase of prepaid wireless calling service. This fee would be collected at the point of sale by retail merchants or the service provider and administered by TAX like the Retail Sales and Use Tax.

Under current law, prepaid wireless service is subject to the wireless E-911 fee. The tax on prepaid wireless service is remitted by the service provider and can be calculated using one of three methods. The tax is administered by the Wireless E-911 Services Board.

This bill would be effective on January 1, 2011.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. **Budget amendment necessary:** Yes.

ITEM(S): 262, Department of Taxation

This bill would allow TAX to recover its direct costs of administering the new prepaid wireless E-911 fee. TAX recommends that the language set forth below be inserted into Item 262 to appropriate such revenues to TAX:

J. The Department of Taxation is hereby appropriated revenues from the wireless E-911 fee imposed pursuant to § 56-484.17:1, *Code of Virginia*, to recover the direct cost of administration incurred by the department in implementing and collecting such fee.

8. **Fiscal implications:**

Administrative Costs

This bill would require TAX to take over the administration and collection of the prepaid wireless E-911 fee currently administered by the Wireless E-911 Services Board. In order to do so, TAX would need to add several new lines to the existing Retail Sales and Use

Tax Return, update its systems in order to capture the data on the new lines, and hire an additional customer service representative to handle increased questions from taxpayers. TAX would incur total costs of \$9,000 in Fiscal Year 2010, \$252,000 in Fiscal Year 2011, \$55,000 in Fiscal Year 2012, \$56,000 in Fiscal Year 2013, \$57,000 in Fiscal Year 2014, \$58,000 in Fiscal Year 2015, and \$59,000 in Fiscal Year 2016. TAX would not need a General Fund appropriation to fund its costs of implementing this new fee, instead, TAX would receive revenues from the prepaid wireless E-911 fee to reimburse it for the direct costs of administering the fee.

Revenue Impact

This bill would have an unknown impact on the Wireless E-911 Fund. TAX does not have any data on the number of transactions associated with prepaid wireless service to compare to the current method of assessing wireless E-911 fees for prepaid service. According to the Wireless E-911 Board's FY 2008 Annual Report, the Wireless E-911 Fund received approximately \$52.3 million in Fiscal Year 2009. The Board's Annual Report does not break this amount out by type of wireless service.

9. Specific agency or political subdivisions affected:

Department of Taxation
Wireless E-911 Services Board

10. Technical amendment necessary: No.

11. Other comments:

Background

Current law provides for a wireless E-911 surcharge with the revenues deposited into the Wireless E-911 Fund. This surcharge is administered by the Wireless E-911 Services Board. Each wireless service carrier and reseller must collect a surcharge of \$0.75 per month from each of its postpaid customers through its regular billing. However, for prepaid wireless service, the E-911 fee must be paid through one of the following methods:

- 1) The wireless service carrier or reseller can collect \$0.75 fee a month from each active prepaid customer with an account balance equal to or greater than \$0.75;
- 2) The wireless service carrier or reseller can divide its total prepaid wireless revenue from Virginia customers each month, dividing by \$50, and multiplying the result by \$0.75. This amount would be remitted without the wireless carrier collecting a separate charge from its prepaid customers for the amount; or
- 3) The wireless service carrier or reseller can collect the \$0.75 fee at the point of sale.

The industry states that the current administration of prepaid wireless fees does not fit the growing method of receiving prepaid wireless service through retail transactions, as the anonymous nature of such transactions does not allow revenues to be accurately sourced

back to a particular state for the appropriate fee to be applied. Because of this, the majority of wireless service carriers remit the prepaid wireless E-911 fee through the second method described above.

Proposal

This bill would repeal the current E-911 fee on prepaid wireless service and would impose a new prepaid wireless E-911 fee of \$0.50 on each retail purchase of prepaid wireless calling service. The proposed prepaid wireless E-911 fee would not be subject to any other state or local fee or tax. This fee would be collected at the point of sale and separately stated on the invoice or receipt or otherwise disclosed to the customer by the retail merchant.

In lieu of collecting the prepaid wireless E-911 fee from customers, a retail merchant may temporarily absorb such charges and become solely liable for the prepaid wireless E-911 fee on all retail sales of prepaid wireless calling service, provided that the Tax Commissioner has granted the retail merchant written authorization to absorb the prepaid wireless E-911 fee for such period. The retail merchant would not be allowed to advertise or hold out to the public that he will absorb or relieve the customer of all or any part of the fee.

The proposed fee would be administered by TAX like the Retail Sales and Use Tax. However, the administration of the new prepaid wireless E-911 fee would differ from the Retail Sales and Use Tax in several respects. Unlike the Retail Sales and Use Tax, under which the retail merchant may be liable if the customer does not remit the tax or fails to remit the correct amount of tax, under the wireless E-911 fee, the retail merchant is not liable for fee amounts not remitted by the customer. Retail merchants would be responsible for remitting any prepaid wireless E-911 fee that they actually collect. Also, this bill would provide a dealer discount of 5% of the prepaid wireless E-911 fee collected by the retail merchant or the service provider as compensation. Under current law, dealers are allowed a discount on the first three percent of the Retail Sales and Use Tax collected in order to compensate dealers for accounting for and remitting the Retail Sales and Use Tax. A dealer may take a discount of either 4%, 3%, or 2%, depending on his monthly taxable sales, of the first 3% of the Virginia Retail Sales and Use Tax he collected as compensation. In addition, under the Retail Sales and Use Tax, the amount of tax must be set forth on the invoice or receipt. Under the wireless E-911 fee, the fee amount may be either separately stated on the invoice or receipt, or otherwise disclosed to the customer by the retail merchant.

TAX would be required to develop and publish guidelines for the new prepaid wireless E-911 fee. The guidelines would include provisions for TAX to waive requirements, such as separately stating the prepaid wireless E-911 fee, for "small dealers." The guidelines would define "small dealer," in whole or in part, based upon the sales of prepaid wireless calling services made by a dealer.

The bill also provides that the rate of the proposed prepaid wireless E-911 fee would increase or decrease proportionately with any changes to the E-911 fee on postpaid wireless service. TAX would be required to provide notice of the rate change on its website at least 30 days before the effective date of any change in the fee rate.

The new fee would be imposed on retail transactions occurring on and after January 1, 2011.

Similar Legislation

Senate Bill 441 is similar to this bill, except that retail merchants would be liable for payment of the prepaid wireless E-911 fee, which would thereafter be a debt from the customer to the retail merchant until paid.

Senate Bill 97 would increase the monthly landline and wireless E-911 taxes by \$0.05 per access line to provide additional funding for the Line of Duty Health Benefits Trust Fund and would also amend the Line of Duty Act to include local employees who were disabled in the line of duty on or after January 1, 1966.

Senate Bill 238 would clarify that mobile telecommunications service resellers are required to collect the wireless E-911 surcharge on all sales by retailers of prepaid mobile telecommunications service.

Senate Bill 279 would increase the monthly landline and wireless E-911 taxes by \$0.18 per access line to provide additional funding for the Line of Duty Health Benefits Trust Fund. This bill would also amend the Line of Duty Act to include local employees who were disabled in the line of duty on or after January 1, 1966.

cc : Secretary of Finance

Date: 2/18/2010 AM
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