

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 911

**PRINTER NO.** 1756

**AMOUNT**

See Fiscal Impact

**FUND**

911 Fund

**DATE INTRODUCED**

April 13, 2015

**PRIME SPONSOR**

Representative Barrar

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 911 amends Title 35 (Health and Safety) Chapter 53 of the Pennsylvania Consolidated Statutes, further providing for emergency telephone service.

**Section 5303 – Telecommunications management**

This section describes the powers and duties of the Pennsylvania Emergency Management Agency (PEMA) and establishes a 911 board (board) within PEMA.

PEMA Duties

1. Publish guidelines and application procedures for the collection and distribution of the 911 surcharge revenues;
2. Establish a Statewide 911 plan that sets forth priorities for 911 systems and plans for Next Generation 911 (NG911) technology;
3. Designate a State 911 coordinator from existing PEMA staff;
4. Establish formulas and methods to distribute 911 surcharge revenues;
5. Establish and publish annually uniform standards for technology, NG911 technology, administration, and operation of 911 systems;
6. Establish and publish eligible uses for 911 surcharge revenue;
7. Perform audits or request reports from any entity remitting the surcharge or receiving any disbursement from the 911 Fund;
8. Report to the General Assembly annually regarding the status of the 911 system and fund;
9. Develop a comprehensive plan for the implementation of a statewide interoperable internet protocol network using NG911 technology; and
10. Take any other action necessary to implement and enforce this chapter.

911 Board

The board is established within PEMA and shall be comprised of the following:

# SENATE APPROPRIATIONS COMMITTEE

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1. The following officials who shall serve as voting members:
  - a. PEMA Director, who shall serve as Chairperson;
  - b. State 911 Coordinator;
  - c. Commissioner of the Pennsylvania State Police;
  - d. The four Chairs of the Senate and House Veterans Affairs and Emergency Preparedness Committees;
  - e. Mayor of a city of the first class;
  - f. County executive of a county of the second class;
  - g. County Commissioner of a county of the second class A, or a home rule equivalent;
  - h. County Commissioner of a county of the third or fourth class, or a home rule equivalent;
  - i. Two County Commissioners of a county of the fifth, sixth, seventh, or eighth class, or a home rule equivalent;
  - j. 911 Coordinator of a city of the first class;
  - k. 911 Coordinator of a county of the second class;
  - l. 911 Coordinator of a county of the second class A;
  - m. 911 Coordinator of a county of the third or fourth class;
  - n. 911 coordinator of a county of the fifth, sixth, seventh, or eighth class.
2. A representative from the following State agencies, who shall serve as non-voting members, to be appointed be the chief executive or administrative officer of each agency:
  - a. Pennsylvania Public Utility Commission;
  - b. Office of the State Fire Commissioner;
  - c. Governor's Office of Administration.
3. A representative from the following Statewide associations, who shall serve as non-voting members:
  - a. Pennsylvania Chiefs of Police Association;
  - b. Fraternal Order of Police;
  - c. Pennsylvania Emergency Health Services Council;
  - d. Pennsylvania Fire and Emergency Services Institute;
  - e. Association of Public-Safety Communications Officials;
  - f. Pennsylvania Chapter of the National Emergency Number Association;
  - g. Keystone Emergency Management Association;
  - h. Pennsylvania Professional Fire Fighters Association;
  - i. Firemen's Association of the State of Pennsylvania;
  - j. Pennsylvania Wireless Association;
  - k. Pennsylvania Telephone Association;
  - l. Pennsylvania Municipal League;
  - m. Pennsylvania State Association of Boroughs;
  - n. Pennsylvania State Association of Township Supervisors;
  - o. Pennsylvania State Association of Township Commissioners.
4. A member of the general public, who shall serve as a non-voting member.

# **SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE**

The board shall have the following powers and duties:

1. Advise PEMA on regulations and guidelines related to the following:
  - a. Standards for performance reviews and quality assurance programs to improve 911 systems;
  - b. Measures to ensure the compliance of 911 systems with industry standards and Federal regulations;
  - c. Cost-saving measures;
  - d. Measures to promote regionalization of Public Safety Answering Points (PSAPs) and NG911 technology;
  - e. Training standards for emergency dispatchers, call takers, and supervisors.
2. Provide advice and recommendations to PEMA on distribution formulas and methods
3. Promote effective communication and information sharing between PEMA and county 911 coordinators and develop recommendations to improve 911 systems
4. Advise PEMA on plans to deploy NG911 technology
5. Promote the regional use of technology and sharing of information among PEMA, 911 systems, and other state and local agencies

## **Section 5304 – Counties**

Powers and duties of counties are as follows:

1. Ensure the provision of a 911 system for their respective jurisdictions;
2. Develop, maintain, or adopt a 911 system plan to be reviewed and approved by PEMA;
3. Comply with the guidelines, standards, and reporting requirements established by PEMA;
4. Designate a 911 coordinator who shall be responsible for the 911 plan and compliance with Chapter 53.

## **Section 5304.2 – Optional 911 user fee**

In addition to the current 911 surcharge, counties are authorized to impose a fee of up to \$52 per residential address.

Businesses may be charged for each employee in a calendar year as follows:

1. Business with no more than 50 employees, \$12.
2. Businesses with at least 51 employees and not more than 100 employees, \$9.75.
3. Businesses with at least 101 employees and not more than 500 employees, \$6.
4. Businesses with at least 501 employees, \$3.

If the property owner is 65 years of age or older, the county may discount the fee by 10%.

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## **Section 5305 – 911 System Plan**

Counties are required to establish 911 system plans that meet the minimum standards provided for under Chapter 53, which includes voluntary regionalization and consolidation in addition to plans for NG911 implementation.

The board shall also review each 911 system plan for approval or disapproval and if disapproved, the plan is to be returned with deficiencies explained.

## **Section 5306.1 – Fund**

A nonlapsing, restricted, interest-bearing account is established in the State Treasury known as the 911 Fund. The fund shall consist of the following:

1. Surcharge proceeds required to be remitted under Chapter 53;
2. Any money appropriated by the General Assembly;
3. Public and private money from any source;
4. Interest accrued by the fund.

The money in the fund shall only be used for the following:

1. Reasonably necessary costs that enhance, operate or maintain a 911 system, as determined by PEMA in consultation with the board and consistent with the following:
  - a. PEMA shall establish factors for reasonably necessary costs and shall provide the factors annually through PEMA guidelines
  - b. Costs that include the enhancement of operations, maintenance of statewide interconnectivity of 911 systems, establishment of a capital or operating reserve consistent with approved 911 system plans
2. Money from the fund shall not be used on a 911 system that does not conform to PEMA guidelines.
3. Money from the fund shall not be transferred to the General Fund of the Commonwealth or counties.

On a quarterly basis, PEMA must determine the amount available in the fund and within 30 days, disburse the funds to the 911 systems according to the following formula:

1. Not less than 80% of the amount in the fund shall be disbursed to a 911 system through a mathematical formula established by PEMA in consultation with the board, of which at least 30% shall solely be based on population.
2. Up to 15% shall be used by PEMA to establish, enhance, operate or maintain Statewide interconnectivity of 911 systems, including, but not limited to, the use or obligations of money for debt service related to regional or Statewide interconnectivity.
3. 3% shall be disbursed equally to PSAPs. Any consolidations after the effective date of the act shall not reduce a current allocation to a county.
4. Not greater than 2% of the amount in the fund may be retained by PEMA for administrative purposes. Any excess funds shall be added to the 80% formula distribution driven to PSAPs.

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PEMA shall consider the following distribution formula criteria:

1. The formula shall fairly and proportionately reflect 911 needs;
2. The initial distribution formula shall be established and implemented no later than 18 months from the effective date of the act;
3. The formula shall be reviewed every two years and may be adjusted annually;
4. The following factors shall be considered and may be included:
  - a. Base level costs common to all 911 systems;
  - b. Population and population density;
  - c. Call volume, including what constitutes a call as published by PEMA;
  - d. Extenuating factors such as:
    - i. Topography;
    - ii. Concentrated exposures such as transit or industrial facilities;
    - iii. Cyclical exposures such as high-attendance public events
  - e. The 911 system's average reported allowable costs for the five years preceding the effective date of the act;
  - f. The total annual disbursement to any one 911 system may not exceed the actual costs as determined by PEMA in accordance with the provisions of the act. Actual costs may include amortization or depreciation of allowable capital costs of the 911 system, which are to be determined by using generally accepted accounting principles and approved plan allocations to capital and operating reserves, if approved by PEMA.

Until the 911 board develops and PEMA implements a distribution formula, the following interim distribution formula shall be used:

1. 106% times the respective 911 system's average local exchange telephone carrier's surcharge collections for five years preceding the effective date of the act;
2. 106% times the respective 911 system's average of VoIP provider's surcharge collections for the five years preceding the effective date of the act;
3. The remaining amount shall be distributed based on the ratio of a 911 system's average reported allowable costs to the average reported allowable costs for all 911 systems for the five years preceding the effective date of the act.

PEMA shall consider the following if a surplus remains in the fund:

1. If excess money remains in the fund after the required disbursements, PEMA shall distribute the remainder to the 80% formula-driven share;
2. If a surplus exists for eight consecutive quarters, PEMA shall provide written notice to the General Assembly with a recommended reduced surcharge amount for its consideration;
3. The written notice shall be submitted within 60 days after the end of the eighth consecutive quarter of a surplus.

A county shall not be eligible to receive funds unless the governing body of the county adopts a resolution authorizing acceptance of the funds. The county shall provide public notice of the intent to adopt the resolution and shall provide a copy of the resolution to PEMA.

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The fund shall be audited in a manner consistent with Commonwealth administered restricted receipts accounts. PEMA shall require biennial performance audits of each PSAP's use of disbursements it has received from the fund, which shall include amounts placed in capital/operating reserves consistent with published guidelines established by the agency.

### **Section 5306.2 – Uniform 911 surcharge**

A uniform surcharge of \$1.65 per month is imposed on all 911 communications service or prepaid wireless devices providing 911 communications as required under federal law. Each subscriber or consumer shall pay the surcharge for which that subscriber or consumer is billed by the provider or seller. The surcharge shall be subject to the following:

1. Shall be uniform, competitively neutral and in equal amount for all subscribers;
2. With the exception of prepaid, the surcharge is to be paid to the State Treasurer to be placed in the fund. The State Treasurer may retain up to 1% of the remitted surcharge to pay expenses directly related to the cost of collection;
3. No subscriber or consumer shall be required to pay more than one surcharge per number or device.

Each provider collecting the surcharge may retain up to 1% of the gross receipts for administrative costs.

The collection of the surcharge by each provider shall be subject to the following:

1. Providers shall collect the surcharge on behalf of PEMA and shall have no legal obligation to take any legal action to enforce the collection of the surcharge. Action may be taken on behalf of PEMA, and upon written request each provider shall annually provide a list of the name and address of those subscribers whose accounts are considered a bad debt and who have failed to pay the surcharge;
2. Providers are not responsible for the unpaid amounts;
3. The provider shall remit to the State Treasurer any lesser amounts when a partial payment of a monthly bill is applied first to the amount owed by the subscriber;
4. The surcharge shall not be subject to any tax or charge levied by the Commonwealth, political subdivision or intergovernmental agency for 911 purposes and shall not be considered revenue of the provider;
5. Nothing shall prevent the provider from recovering the costs of implementing and maintaining 911 communications service;
6. Funds remaining in a State and county 911 fund prior to the effective date of the act shall only be used for purposes relating to the operation of 911 systems.

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## **Section 5307 – Payment, collection and remittance of surcharge by providers of 911 communications services**

The surcharge will continue to be applied to a subscriber's post-paid monthly bill and be remitted to the State Treasurer to be deposited into the fund. The section addresses surcharges for "multi-line" telephone systems and digital transmission links, including primary interface service or a digital Signal – 1 (DS-1) level service or equivalent, which provides a subscriber access to a PSAP to a dedicated 911 system when the digits 9-1-1 are dialed.

Each VoIP provider shall collect the uniform 911 surcharge for the number of VoIP service lines enabled for simultaneous outbound calls regardless of actual usage.

## **Section 5307.1 – Payment, collection and remittance of surcharge by sellers of prepaid wireless telecommunications service**

The surcharge will continue to be applied at the point-of-sale when a prepaid device or service is purchased and be remitted to the Department of Revenue (Department) to be deposited into the fund.

The surcharge is the liability of the consumer, and the proceeds are to be remitted in the same manner as is required for State sales tax receipts. In addition, the surcharge shall not be included in the base for measuring a tax, fee, surcharge or other charge that is imposed by another government entity, nor shall any other surcharge be imposed by any other government entity on the sale of any prepaid device or service. Sellers (retailers) are authorized to keep 1.5% of the surcharge for administrative purposes.

The following shall apply to the Department:

1. Establish procedures for sellers of prepaid wireless telecommunications service to document that a sale is not a retail transaction when the sale is a resale;
2. Remit all surcharges to the State Treasurer for deposit within 30 days;
3. If necessary, retain 1% of remitted surcharges for administration costs directly related to the remittance of the surcharges.

## **Section 5310 – Penalty**

This section includes penalty provisions for the use or disclosure of database information. A person commits a 3rd degree misdemeanor if the person does any of the following:

1. Uses or discloses database information for purposes in conflict with the act without the consent of the subscriber or customer;
2. Knowingly uses any of the following to avoid any charges for the services of a provider:

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- a. Telephone number or database information of a 911 system
- b. Other emergency communications service
- c. NG911 service
- d. Future technology providing the same or similar functionality
- e. VoIP service

## **Section 5311.7 – Prohibition against release of information**

This section includes language clarifying that any information acquired shall be kept confidential and cannot be released by an employee, agent, or representative of the Commonwealth or PSAP except aggregations of information that do not effectively identify proprietary information.

## **Section 5313 – Legislative report**

PEMA in consultation with the board shall prepare and submit a report to the General Assembly within two years from the effective date of the act, including the following:

1. Recommendations on the impacts of current and anticipated technological and market changes on 911 communications service, including:
  - a. The structure and adequacy of the surcharge and fund;
  - b. Other local revenue options to support 911 services;
  - c. Any benefits that could be derived from dispatching all 911 calls from county PSAPs.

## **Section 5314 - Inventory**

PEMA in consultation with the board is required to conduct a comprehensive inventory of each county PSAP's facilities, infrastructure, network capabilities, and related equipment and services to determine the status of each PSAP's 911 system's stage of advancement to NG911.

Counties shall cooperate with PEMA by providing the necessary information to complete the inventory. Counties that do not provide the information requested by PEMA within 45 days of the request shall be suspended from any grant or funding program or be required to forfeit 911 funding.

PEMA is required to complete a report detailing its findings and recommendations to the General Assembly by March 31, 2016 and shall maintain and update the inventory biannually.

The act would expire on June 30, 2019. The establishment of the board takes effect immediately and all other provisions take effect July 1, 2015.



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### **FISCAL IMPACT:**

HB 911 establishes a new funding mechanism for 911 systems across the Commonwealth. A uniform monthly 911 surcharge fee is established at \$1.65 per required device. PEMA estimates this fee will generate \$314 million in total revenue and would result in an additional \$124 million available for 911 service programs when compared to the current funding model.

Currently, all wireless telephone devices are surcharged a monthly fee of \$1.00, and prepaid wireless cards/devices are surcharged \$1.00 at the point of retail sale. These 911 surcharge fees are currently remitted to the state Wireless E-911 Emergency Services Fund for disbursement by PEMA to the county and regional PSAPs. Landline telephones are surcharged \$1.00-\$1.50 per phone, depending on the class of county and retained within a restricted account by the county. There is also a \$1.00 fee on VoIP service that is collected by VoIP providers.

According to PEMA's most recent 911 Program Annual Report for 2013, total county expenditures were \$284 million while total 911 surcharge revenues from all required sources generated approximately \$190 million. It is projected that 2014 surcharge revenues will remain around \$190 million with county expenditures increasing to approximately \$292 million.

The collective revenue from the uniform 911 surcharge will be deposited into a new nonlapsing restricted account in the State Treasury known as the 911 Fund. The proposed legislation also changes the funding formula for how available funding will be distributed from the 911 Fund.

PEMA is authorized to use up to 2% of fee revenue to cover the increased cost of administering the program.

Section 5304.2 authorizes, but does not require, counties to impose an optional 911 user fee. To the extent that a county opts to impose the fee, money will be deposited into a newly established 911 fund for costs related to the maintenance and operation off 911 services in the county.