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FISCAL IMPACT REPORT

SPONSOR SCORC **ORIGINAL DATE** 2/13/17
LAST UPDATED 3/09/17 **HB** _____
SHORT TITLE E911 Surcharges on Communications Services **SB** 46/SCORCS/aSPAC/
aSFI#1/aHBIC
ANALYST Romero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
\$3,632.0	\$3,856.0	\$4,333.0	Recurring	E911 Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$71.0	\$25.0	\$25.0	\$121.0	Recurring	TRD Operating

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 32

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

Taxation and Revenue Department (TRD)

Department of Information Technology (DoIT)

SUMMARY

Synopsis of HBIC amendment to SCORC Substitute for Senate Bill 46 as amended

This amendment provides clarification to the definition of “enhanced 911 surcharge” adding the language, “the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed”.

The amendment also adds clarifying language suggested by TRD throughout the new material. Additionally, the amendment strikes the term “calls” and replaces it with “communication, providing conforming changes to the rest of the bill.

Synopsis of Senate Floor amendment of SCORC Substitute for Senate Bill 46

This amendment reverts a portion of the definition for “enhanced 911 surcharge” to the original bill, striking SPAC amendment number 2 and changing the portion of the definition to say, “the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls”.

Synopsis of SPAC amendment of SCORC Substitute for Senate Bill 46

This amendment strikes a portion of the definition for “communication service” and replaces the stricken lines with distinct and clarifying language. The amendment also adds clarifying language to the definition of “enhanced 911 surcharge”. Finally, the amendment clarifies the service lines that will be liable to pay the enhanced 911 emergency surcharges.

Synopsis of Senate Corporations and Transportation Committee Substitute for Senate Bill 46

This substitute amends the Enhanced 911 Act to provide expansion of the current \$0.51 surcharge to be imposed on subscribers of communication services (rather than telecommunication companies) to support the provision of enhanced 911 emergency assistance services. The “enhanced 911 surcharge,” as defined by the bill, covers each active number using a Voice over Internet Protocol (VoIP) communications and is assessed to the retail customer, provided that it will not be assessed on the provision of broadband internet access service. The bill stipulates that the enhanced 911 surcharge shall not apply to prepaid wireless communication services. However, prepaid wireless communications sold in New Mexico will still be charged in a different manner.

The bill also amends the Enhanced 911 Act Section 63-9D-3 NMSA 1978 to add and revise a number of definitions including “communication service”, “enhanced 911 surcharge”, “ESInet”, “NG-911”, “surcharge collected”, and “VoIP service provider”.

Section 63-9D-11.1 NMSA 1978 is amended to extend to counties the same opportunities that municipalities have in adopting an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency.

A new section is also added to the Enhanced 911 Act that proposes the imposition of the “prepaid wireless enhanced 911 surcharge” at a rate of 1.38% of the gross value of the retail transaction. However, the proposed legislation in the bill states that retail transactions considered as “minimal” worth \$5 or less offering ten minutes or less of talk-time are not required to be subject to the prepaid wireless enhanced 911 surcharge. The bill also repeals Section 63-9D-4.1 NMSA 1978.

This bill proposes that a communication service provider or “seller” would be allowed to deduct and retain 3% of prepaid wireless enhanced 911 surcharges that would be collected by the seller from the consumer.

FISCAL IMPLICATIONS

The Taxation and Revenue Department notes the following, “for some time, innovative electronic forms of voice communication, including technology like VoIP, have steadily increased their adoption levels and consequently raised their presence in the marketplace. The FCC Voice Telephone Services Status Report¹ shows that interconnected VoIP subscriptions nationwide have increased by 9% per year between 2014 and 2015. If we apply this annual flat growth rate to the number of interconnected VoIP subscriptions in New Mexico as reported by the FCC in 2013 (147,000 subscribers), we would estimate 175,000 subscribers in 2015 and 190,000 subscribers in 2016. Under current statute, those VoIP providers capable of providing enhanced 911 services, are not subject to the surcharge faced by land line and mobile phone service providers. Assuming an average number of VoIP subscribers of 217,000 subscribers between 2017 and 2018, the \$0.51 surcharge would generate about \$110,000 in revenue collected in FY18.

Using data² from a survey published by the International Association for the Wireless Telecommunications Industry (CTIA), there were an estimated 420,000 prepaid wireless subscribers in New Mexico in 2013 (considering 23.4% of the wireless market was held by prepaid connections). The latest results show a 6% growth of wireless connections nationwide between 2014 and 2015. If we apply this annual flat growth rate to the number of prepaid wireless subscribers, we would estimate 501,600 prepaid wireless subscribers in 2016. Assuming an average monthly cost of \$40 a month per line, the 1.38% surcharge would generate approximately \$3.5 million in revenue collected in FY18, taking into account the proposed 3% deduction and retainer from communication service providers.

There is an inherent level of complexity and a high degree of uncertainty associated with the estimated revenue impact for the bill. TRD acknowledges there is a chance the methodology used to estimate the fiscal impact of the bill could be over or under-estimating the expected amounts of tax revenues collected through the proposed prepaid wireless enhanced 911 surcharge. This is based on the actual amount of revenues collected in the states of Colorado and Nebraska, shown below. Both states have had in effect a similar prepaid wireless surcharge of 1.4% in Colorado and of 1% in Nebraska.

Like the surcharge proposed in this bill, the surcharges effective in Colorado and Nebraska must be collected at the time a consumer purchases prepaid wireless service at a retail location, from a seller who delivers the service or on any purchase made by a consumer who has an address or mobile phone number associated with a Colorado or Nebraska location.

Colorado	
Prepaid Wireless Revenue	
Fiscal Year	(Thousands of Dollars)
2015	\$3,028.7
2016	\$2,858.2
2017*	\$1,455.7

*Through December 2016

¹ This Wireline Competition Report was published in November 2016 and it can be downloaded from the FCC’s Internet Access Services Reports webpage located at <https://www.fcc.gov/general/iatd-data-statistical-reports>.

² <http://www.ctia.org/industry-data/ctia-annual-wireless-industry-survey>

Before the bill became law in Nebraska, their 2012 revenue forecast took into account a Public Service Commission’s estimate based on 146,000 prepaid wireless users averaging a retail transaction of \$50 per month. However, Nebraska’s Department of Revenue based their estimate on 304,600 users averaging a transaction amount of \$27.50 per month.”

Nebraska		
Prepaid Wireless Revenue		
(Thousands of Dollars)		
Calendar Year	Actual	Estimated
2013	\$802.8	\$595.0
2014	\$1,125.1	\$1,088.0
2015	\$918.5	\$1,104.0
2016	\$1,153.0	n/a

SIGNIFICANT ISSUES

The SCORC Substitute for Senate Bill 46 imposes a fee on newer communication technologies that were not prevalent at the time the fee was originally enacted. Prepaid wireless and VoIP users currently have access to emergency 911 services, but do not contribute to the E-911 fund.

The SCORC substitute broadens the language of services from "telecommunications and commercial mobile radio" to "communications service providers." Communications encompasses newer technology and emerging providers and may extend the surcharge to future services regardless of their underlying technologies or marketing strategies.

ADMINISTRATIVE IMPLICATIONS

The Audit and Compliance Division (ACD) reports the bill would have a moderate impact as changes to the form RPD-41114 will need to be made, and ACD will need to train staff to assist taxpayers. The Information Technology Division (ITD) reports implementing these changes to current law proposed by the bill would have a moderate impact of approximately 500 hours or about 3 ½ months. Given that “prepaid wireless enhanced 911 surcharge applies to retail transactions occurring on or after July 1, 2017,” the proposed effective date of the bill does not provide enough time to conduct all stages necessary for proper implementation of the program. A more reasonable timeframe for implementation would be January 1, 2018 for the changes to be combined with the normal semi-annual gross receipts tax updates.

RPD reports the bill would represent a minimal impact on their processes (\$11,000 non-recurring, \$25,000 recurring). This bill requires RPD to update the E911 services surcharge return form and taxpayer instructions, and create publications necessary to properly manage and educate taxpayers about the new Prepaid Wireless E911 Surcharge program. RPD would need to collaborate with ITD to help build and test all updates in GenTax and to consult on all E911 forms, instructions, and publications. RPD will require two additional FTE, especially in the first year of implementation to administer and provide support to sellers for the new Prepaid Wireless Surcharge program.

If the Taxation and Revenue Department determines that regulating the surcharge’s sourcing is needed to ensure the state receives its correct share of surcharge revenue, sourcing the surcharge

as defined in the federal Mobile Telecommunications Sourcing Act (instead of by the subscriber's billing address) may require regulations. Audit procedures will need to be developed.

TECHNICAL ISSUES

The SCORC substitute for Senate Bill 46 does not change one instance of the term "telecommunications company or commercial mobile radio" on page 11, lines 20-21. Consider making the same change on page 11, lines 20-21.

Section 1 (B) refers to "retail customer" and later in the bill refers to "subscribers". If these entities are the same, the language should be consistent.

IR/al/sb