

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2067
(Senator Krebsbach)

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to the study of coordination of public safety answering points coverage; to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-03.1, 57-40.6-04, 57-40.6-05, 57-40.6-06, and 57-40.6-08 of the North Dakota Century Code, relating to a fee on telephone exchange access service and application of that fee to wireless service for support of wireless enhanced 911 service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or emergency enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. "FCC order" means federal communications commission order 94-102 (961 Federal Register 40348) and any other FCC order that affects the provision of wireless enhanced 911 service.
3. "Public safety answering point" or "PSAP" means a communications facility operated on a twenty-four hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
4. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in the Mobile Telecommunications Sourcing Act (Pub.L. 106-252; 4 U.S.C. 124(8)).
5. "Telephone access line" means the principal access to the telephone company's switched network including an outward dialed trunk or access register.
6. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
7. "Wireless access line" means each active wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
8. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.

9. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:
- a. Services commonly referred to as wireless; and
 - b. Services provided by any wireless real time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.
10. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

SECTION 2. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose ~~excise tax~~ fee on telephone exchange access ~~lines~~ service and on wireless service - Procedure. The governing body of a county or city may impose ~~an excise tax~~ a fee on the use of telephone exchange access ~~lines~~ service and on the use of wireless service in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the ~~excise tax fee~~ permitted under this section. The resolution must specify an effective date for the ~~tax fee~~ which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the ~~excise tax fee~~. The resolution must include a provision for submitting the proposed ~~excise tax fee~~ to the electors of the county or city before the imposition of the ~~tax fee~~ is effective. The resolution must specify a ~~tax fee~~ that does not exceed one dollar per month per telephone access line and per wireless access line.
2. The question of the adoption of the ~~excise tax fee~~ must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed ~~tax fee~~ authorized under subsection 1. The question of the adoption of the ~~excise tax fee~~ may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the ~~excise tax fee~~. The ~~tax fee~~ is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the ~~tax fee~~ for an initial six-year period.
3. Any political subdivision that desires to increase the ~~tax fee~~, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the ~~tax fee~~. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the ~~tax fee~~ authorized by this section is approved by the electors, the ~~tax fee~~ may be reimposed for six additional years without resubmitting the question to the electors.
4. In any geographic area, only one political subdivision may impose the ~~excise tax fee~~ and imposition must be based on the subscriber service address.
5. In the interest of public safety, where the ~~customers-exchange~~ subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing

the ~~tax~~ fee do not coincide, and where all of the political subdivisions within the ~~exchange subscriber's telephone exchange access service~~ boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the ~~exchange subscriber's telephone exchange access service~~ boundary have voted for the ~~tax~~ fee, ~~an exchange customer residing a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system services communications system.~~ The telephone ~~company~~ exchange access service provider may collect an additional ~~tax~~ fee, equal in amount to the basic ~~tax~~ fee on those subscribers within the exchange boundary. The additional ~~tax~~ fee amounts collected must be remitted as provided in this chapter.

6. A fee imposed under this section before August 1, 2001, may be extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the governing body of the city or county at a regular or special city or county election.

SECTION 3. AMENDMENT. Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03. Payment of ~~tax~~ fee by telephone ~~company~~ exchange access service and wireless service subscriber. The resolution imposing a ~~tax~~ fee under section 57-40.6-02 must include a requirement that the telephone ~~company~~ exchange access service provider and the wireless service provider collect the ~~tax~~ fee from the subscriber. In its billing statement or invoice to the subscriber, the telephone ~~company~~ exchange access service provider and the wireless service provider shall state the amount of the ~~tax~~ fee separately.

SECTION 4. AMENDMENT. Section 57-40.6-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03.1. Enhanced 911 data base management charges. Any telephone ~~company~~ exchange access service provider charges for enhanced 911 data base management must be on a per telephone ~~exchange access line~~ service basis.

SECTION 5. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. ~~Tax~~ Fee collection procedure. A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the ~~tax~~ fee, including a provision for reimbursement to the telephone ~~company~~ exchange access service provider and the wireless service provider for the actual costs of administration in collection of the ~~tax~~ fee, not to exceed five percent of the fee collected. The resolution must also include a provision that the ~~tax~~ fee be paid by the telephone ~~company~~ exchange access service provider and the wireless service provider within thirty days after it is collected from the subscriber.

SECTION 6. AMENDMENT. Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-05. Restriction on use of ~~tax~~ fee proceeds. The ~~county~~ governing body may not use the proceeds of the ~~tax~~ fee imposed under section 57-40.6-02 for any purpose other than ~~establishing or operating the emergency services communication system as provided in this section.~~

1. Within twenty-four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911

service from all wireless carriers providing service as of that date within the governing body's jurisdiction.

2. The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.
3. The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.
4. Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system.
5. The governing body or its designee shall keep records to show expenditures for wireless service providers separately from expenditures for telephone exchange access service providers.

SECTION 7. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency services communication system advisory committee, any telecommunications company~~ Any telephone exchange access service provider providing emergency 911 service shall provide, on an annual basis, current customer names, addresses, and telephone numbers to each public service answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines.~~ Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iii).

SECTION 8. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. ~~A public agency, public safety agency, or local exchange telecommunications company~~ telephone exchange access service provider, or wireless service provider that provides access to an emergency system ~~at or below cost, or any officer, agent, or employee of any public agency, public safety agency, or local exchange telecommunications company~~ telephone exchange access service provider, or wireless services provider, is not liable for any civil damages as a result of any act or omission except willful and wanton misconduct or gross negligence in connection with developing, adopting, operating, or implementing any plan or system as provided under this chapter.
2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.

3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

SECTION 9. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Reports of coordination of public safety answering points coverage. The governing body of a city or county, which adopted a fee on telephone exchange access service and wireless service under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the state radio division and to the public safety answering points coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the office of management and budget to represent the state radio division. The public safety answering points coordinating committee shall file its report with the legislative council by November first of each even-numbered year.

SECTION 10. EFFECTIVE DATE. This Act becomes effective on August 1, 2001.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2067.

Senate Vote: Yeas 46 Nays 3 Absent 0

House Vote: Yeas 80 Nays 14 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State