

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 11, 2011, in Room 785 of the Docking State Office Building.

All members were present except:
Representative Rob Bruchman

Committee staff present:
Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees appearing before the Committee:
Mike Smith, IOCGG
Patrick Fucik, Sprint
Kimberly Winn, Kansas League of Municipalities

Others attending:
Thirty two including the attached list.

Action on:
HCR 5022-Urging adoption of federal regulations or policies permitting Kansas to regulate the underground storage of natural gas in interstate transportation.

Annie Kuether moved to pass HCR 5022 favorably to the house floor. Seconded by Representative Reynaldo Mesa. Motion passed unanimously.

Action on HCR 5022 closed.

Representative Reynaldo Mesa will carry **HCR 5022** on the House floor.

Mike Smith, IOGCC, spoke to the committee on hydraulic fracturing. He noted that there is a site online where one can input their property coordinates and determine if there has been any drilling on that property.

Continued informational hearing on:
E-911

Matt Sterling, Office of Revisor of Statutes, (Attachment 1) spoke to the committee about what **SubSB 50** as proposed would change in current statute. He went through an explanation of each section of the bill (sections 1-22).

Questions were asked and comments made by Representatives: Stan Frownfelter, Annie Kuether, Joe Seiwert, Nile Dillmore, Vern Swanson, Don Schroeder, Don Hineman, Gail Finney, Forrest Knox, Reynaldo Mesa, J. Stephen Alford, Tom Sloan, Annie Kuether, and Carl Holmes.

Cindy Lash, Kansas Legislative Research Department, (Attachment 2), offered information explaining the current law concerning 911 user fees, administrative fees, and distribution of funds. Additionally, she explained a flow chart on **SubSB 50** that explains how the new bill would distribute funds.

Questions were asked and comments made by Representatives: Carl Holmes, Nile Dillmore, Forrest Knox, Mike Slattery, Don Hineman, and Tom Sloan.

The informational hearing on E-911 was suspended.

CONTINUATION SHEET

The minutes of the House Energy and Utilities Committee at 9:00 A.M. on March 11, 2011, in Room 785 of the Docking State Office Building.

Hearing on:

SubSB 50- Emergency communications service; relating to fees, charges, collection and distribution.

Proponents:

Patrick Fucik, Sprint, (Attachment 3), spoke to the committee in support of **SubSB 50** noting that the bill contains changes to the Kansas 911 statutes that are necessary to ensure a reliable and equitable source of funding in order to maintain and support the most effective 911 system in Kansas and ensure this vital public safety system.

Kimberly Winn, League of Kansas Municipalities, (Attachment 4), offered testimony in support of **SubSB 50**. Their number one goal is to make sure the money collected is spent in the manner in which it is intended to get the best service available. Additionally, they offered several amendments that bring this bill back to the intent of the original legislation that was passed out previously. Their amendment recommendations include changes with: coordinating council, grant funds, fees, and some clean up measures.

Questions were asked and comments made by Representatives: Forrest Knox, Vern Swanson, Tom Sloan, and Nile Dillmore.

Bob Lamkey, Director of Public Safety, Sedgewick County, helped to answer questions posed by the committee.

The hearing on **SubSB 50** was suspended until Monday March 14, 2011.

The next meeting is scheduled for March 14, 2011.

The meeting was adjourned at 10:46 A.M.

HOUSE ENERGY AND UTILITIES COMMITTEE

GUEST LIST

DATE: March 11, 2011

NAME	REPRESENTING
Colin Curtis	Sandstone Group
Bob Lemkau	Seduction card
Doug Smith	KLPG
Patrick Frick	Sprint
Gary E Anderson	Ks Sierra Club
Jim Stanton	Northern Natural Gas
MIKE LOEFFLER	Northern Natural Gas
Dale Götter	City of Wichita
Amcar Hox	Gov Grants Program
Diana Fish	Verizon
Walter Way	Jensen County
Dan Halterman	KEC
Ed Klumpp	KACPI/KOA/KSA
Ron Caches	GBA
Mike Zee	Sprint
Ed Cross	KIOGA
Kathleen Oatman	KSWA
Rex Buchanan	Ks Geological Survey
Tom Day	KCC

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: March 11, 2011

[illegible]

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Energy and Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 10, 2011
Subject: Senate Bill 50

SB 50 is an act concerning emergency telephone service and the implementation, collection and distribution of 911 fees. Many of the current statutes concerning the 911 system and fees are set to sunset on July 1, 2011. This act would create a new fee structure for the 911 fees, as well as create a 911 coordinating council. The bill would be effective upon publication in the Kansas register, but many of the provisions of the bill would not go into effect until January 1, 2012. Below is a more detailed listing of the provisions of the bill.

Section 2. is the definitions section. It uses many of the same definitions from current law and adds several new definitions, such as, "consumer," "department," "next generation 911," "retail transaction," and "seller."

Section 3. This section creates the coordinating council and describes its duties. The council is responsible for monitoring the delivery of 911 services, developing strategies for future enhancements to the 911 system and to distribute grant funds to PSAPs. The council would consist of 12 voting members appointed by the governor, 4 voting members from the legislature and 10 non-voting members appointed by the governor to represent various interests.

This section also establishes that the chair of the 911 coordinating council, appointed by the governor, will serve as the coordinator of E-911 and NG-911 services, apply for federal grants, administer the federal grant fund and serve as the liaison between the council and the LCPA.

The council is also tasked with selecting the local collection point administrator to collect 911 fees and to distribute the fees to PSAPs and the state grant fund as directed by the council. Currently, the LCPA is defined as the association of cities and counties. After implementation, the local collection point administrator would be the entity that the council selects to administer these provisions of the act. The Kansas Association of Counties would provide any staffing the council needs to effectuate the act.

The council is authorized to adopt rules and regulations to effectuate this act, including raising or lower the 911 fee within a set range. The expenses of the council are to be paid from the

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911 state grant fund and shall comprise no more than 2% of the total receipts of all state 911 fees. The council would be reimbursed for travel expenses and meals, but would serve without compensation. Finally, the council is authorized to impose civil penalties on providers that are acting in bad faith in failing to comply with the provisions of this act.

Sections 4 and 5. Section 4 establishes the 911 federal grant fund within the state treasury and makes the chair of the 911 coordinating council the administrator of the fund. The fund would be comprised of the moneys received in federal grants for implementation of 911 services. Subject to the limitations imposed by the act and the applicable federal regulations, the chair would distribute the federal grant funds pursuant to the recommendations of the council.

Section 5 would create the 911 state maintenance fund within the state treasury also to be administered by the chair of the council. The fund would be comprised of any moneys contributed by the legislature or private donations and would be distributed pursuant to the recommendations of the council.

Section 6. This section requires the council to select the local collection point administrator. It limits the agreement between the council and the LCPA to a one year maximum and would need to be reviewed annually.

Section 7. This section directs the LCPA, upon the advice of the council, to create the 911 state fund and the 911 federal grant fund outside of the state treasury. After implementation of this section, the secretary of administration, the current administrator of the wireless enhanced 911 grant fund, would certify the sources of money contained in such fund and transfer all funds from state fee sources to the 911 state grant fund and all funds from federal sources to the 911 federal grant fund. The LCPA would be authorized to maintain an action to collect any funds owed by providers.

The council is tasked with ensuring that the funds in the 911 state grant fund be used for the listed purposes and to develop criteria for eligible purchases and for grant applicants, as well as to make the final decision on grant awards.

Section 8. This section establishes a 911 fee of \$.50 per month per subscriber account of any land line, wireless device, VoIP service or any other service capable of contacting a PSAP. The providers of these services would be required to remit the 911 fees collected to the LCPA pursuant to section 9. This section does not apply to any prepaid wireless service.

Section 9. This section requires the providers to remit the fees collected to the LCPA within 15 days after the end of the calendar month in which they were received. The providers are also required to file a return for such remitted fees to the LCPA to include information required by the LCPA.

Section 10. This section imposes a prepaid wireless 911 fee of 1% per retail transaction to be collected by sellers of prepaid wireless service. The amount of the fee is required to be stated separately on the invoice or receipt or otherwise disclosed to the consumer by the seller. The prepaid wireless fee would be changed proportionally to any change to the 911 fee authorized by the council.

Section 11. This section requires sellers to remit any prepaid wireless 911 fees collected to the department of revenue consistent with the provisions of the Kansas retailers' sales tax act. The department is authorized to audit sellers to minimize additional costs to the department as well as

initiate collection or audit procedures on sellers if collection efforts by the LCPA are unsuccessful. The department is required to remit all prepaid wireless 911 fees to the LCPA within 30 days of receipt. The department is authorized to retain up to \$70,000 in fiscal year 2012 only to pay for programming and other one-time costs for establishing a collection system for prepaid wireless 911 fees.

Section 12. This section states the prepaid wireless 911 fee imposed by this act shall be the only 911 funding obligation imposed on prepaid wireless service in the state.

Section 13. This section establishes a sliding scale for the distribution method for 911 fees to the PSAPs. The place of primary use information determines the location of a user and which PSAP the corresponding 911 fees should be distributed to. From that pool of money determined by place of primary use information, counties with a population over 80,000 would receive 82% of that total amount. The distribution system scales up for smaller counties by increments of 3% corresponding to every 10,000 person drop in county population. Counties with a population of 65,000 to 79,999 would receive 85% of the pool of money collected from service users with corresponding place of primary use information, counties with a population between 55,000 and 64,999 would receive 88%. This sliding scale continues until it reaches counties with a population of less than 25,000 people. Such county would receive 100% of the pool of money collected from service users with place of primary use information corresponding with such county. Every county would receive a minimum of \$50,000. All moneys remaining after distribution to the PSAPs, as well as any money which cannot be attributed to a specific PSAP, would be transferred to the 911 state grant fund.

All fees that are remitted to the LCPA shall be deposited in the 911 state fund and be treated as if they are public funds pursuant to the banking code for deposit of public moneys. Moneys from the prepaid wireless 911 fee shall be deposited in the 911 state grant fund unless \$2 million of such moneys has been deposited in the state grant fund in any year then any additional moneys received shall be distributed to PSAPs pursuant to the sliding scale method. Information provided by providers to the LCPA or the council will be treated as proprietary records and withheld from the public upon request of the party submitting such records.

Section 14. This section prescribes the ways that the moneys collected from the 911 fees may be spent. These purposes include: implementation of 911 services; purchase of 911 equipment and upgrades; maintenance and license fees for 911 equipment; training of personnel; monthly recurring charges billed by service suppliers; installation, service establishment and nonrecurring start-up charges billed by the service supplier; charges for capital improvements and equipment or other physical enhancements to the 911 system; or the original acquisition and installation of road signs designed to aid in the delivery of emergency service. Expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or purchase of subscriber radio equipment shall not be approved costs.

Section 15. This section provides immunity from liability to the LCPA, each provider and each seller, as well as their employees, for any damages resulting from the failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining or providing 911 service. This immunity does not shield the LCPA, the providers and the sellers from liability under the Kansas Tort Claims Act, intentional acts or negligence.

Section 16. This section requires the receipts and disbursements of the LCPA to be audited yearly by a licensed municipal accountant or certified public accountant. It authorizes the LCPA to require an audit of any provider's books and records concerning the collection and remittance of fees.

This section also requires an audit to be performed by legislative post audit, at least once every three years, of the 911 system to determine: Whether moneys distributed to PSAPs are being used appropriately; whether the amount of 911 moneys is adequate; and to evaluate the status of 911 service implementation. The costs of these audits would be paid from the 911 state grant fund. The audit report would be submitted to the council, the LCPA, the House Energy and Utilities Committee and the Senate Utilities Committee. This section also states that the legislature shall review the act during the 2014 legislative session and at least once every 5 years thereafter.

Section 17. This section states that the act does not limit the ability of a provider to recover its costs associated with designing, developing, deploying and maintaining 911 service, as well as its cost of collection and administration of 911 fees, from its customers.

Section 18. This section requires a provider of wireless service to receive prior approval of the PSAP before directing emergency calls to that PSAP and to establish the emergency telephone number "911" across the state.

Section 19. This section requires the governing body of every city and county in the state to provide or contract for 24-hour receipt of wireless emergency calls for all wireless service areas within such city or county.

Section 20. The 911 coordinating council is created upon the effective date of this act, which is publication in the Kansas Register. However, the funding for the council, which comes from the state grant fund, will not be in place until after January 1, 2012. This section amends current law to add the expenses of the council for 2011 to the approved uses of the current wireless enhanced 911 grant fund.

Section 21. This section extends the sunset of the wireless enhanced 911 grant fee to January 1, 2012, and directs any unobligated balance in the fund existing on January 1, 2012, to be distributed by the secretary of administration pursuant to subsection (a) of section 7. On January 1, 2012, the wireless enhanced 911 grant fee and the wireless enhanced 911 grant fund would be abolished.

Section 22. This section extends the sunset of the VoIP enhanced 911 grant fee until January 1, 2012.

Section 23. This section adds an exception to the open records for information provided to the LCPA or the council pursuant to this act upon request by the party submitting the records.

Section 24. This section permits the secretary of revenue to provide information concerning remittance of prepaid wireless fees by sellers to the LCPA in order to verify compliance.

SUBSTITUTE for SENATE BILL 50

911 User Fees, Administrative Fees, and Distribution of Funds

Wireline, Wireless, VoIP and Other Service
Capable of Contacting a PSAP

Service Use Fee
(\$0.50 per access line per

Service provider

LCPA

911 State Fund

Distributions to PSAPs based on county population

Pop. greater than 80,000	82% of \$ from its users
Pop. 65,000—79,999	85% of \$ from its users
Pop. 55,000—64,999	88% of \$ from its users
Pop. 45,000—55,999	91% of \$ from its users
Pop. 35,000—44,999	94% of \$ from its users
Pop. 25,000—34,999	97% of \$ from its users
Pop. less than 25,000	100% of \$ from its users

Minimum county distribution = \$50,000

Prepaid Wireless Service

Customer Fee

(1.0% per retail transaction)

Seller

KS Dept. of Revenue
(KDOR)

\$70,000 for startup in
FY2012 only

LCPA

Annual pre-paid receipts in excess of \$2 million

Up to \$2 million in pre-paid receipts annually

911 State Grant Fund

Grants to PSAPs

Note: Up to 2% of funds received by the LCPA can be used for expenses of the 911 Coordinating Council.

911 Federal Grants

Federal
Grant
Awards

Appropriations,
Contributions and
Earned Interest

911 Federal
Grant Fund

911 State Main-
tenance Fund

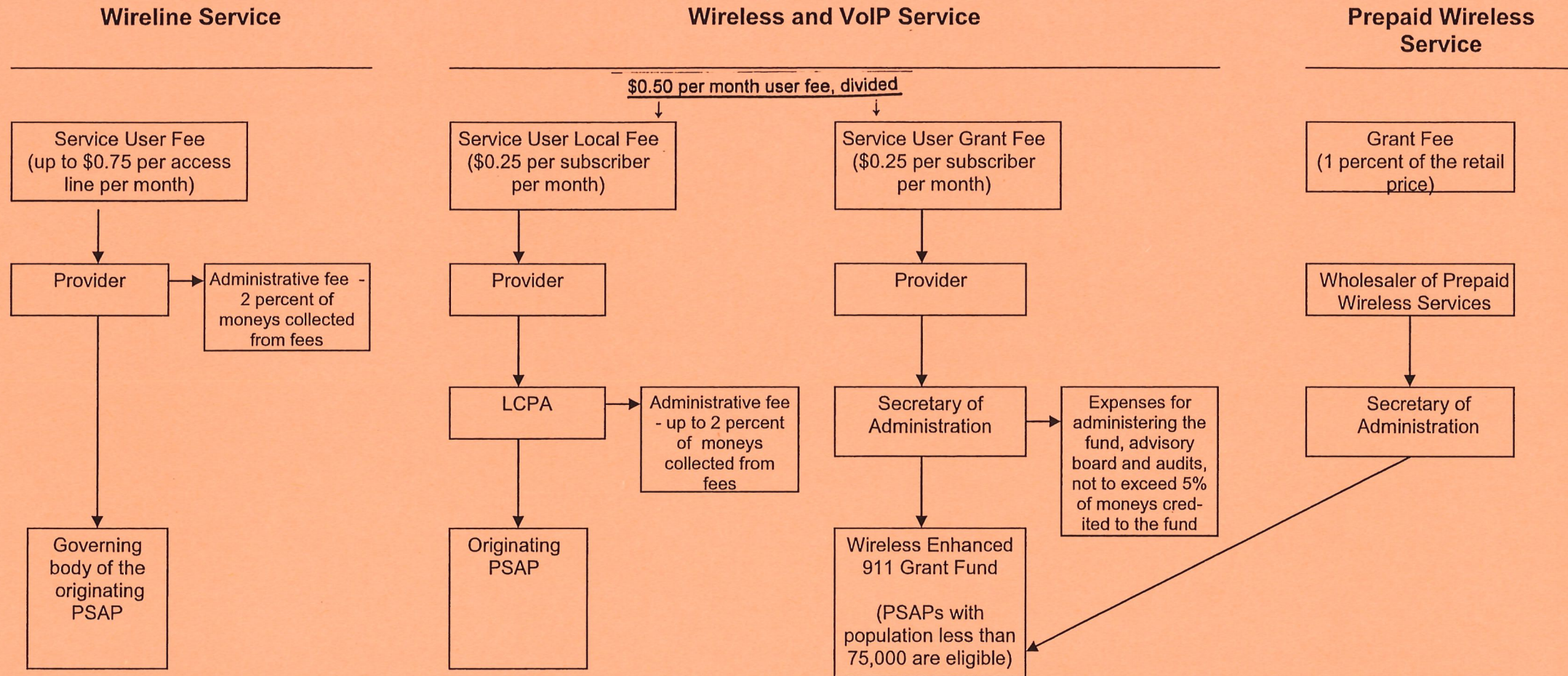
Administrative
expenses of the
Fund

Grants to munici-
palities for PSAPs

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911 User Fees, Administrative Fees, and Distribution of Funds Current Law





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Testimony of Patrick Fucik
Before the House Energy and Utilities Committee
In Support of SB 50:
911 Rewrite / Prepaid Wireless Point of Sale Collection
March 11, 2011

Good morning Chairman Holmes and Members of the Committee. My name is Patrick Fucik and I am the Director of State Government Affairs for Sprint in our West Region. I appreciate this opportunity to speak with you today in support of SB 50.

SB 50 contains changes to the Kansas 911 statutes that are necessary to ensure a reliable and equitable source of funding in order to maintain and support the most effective 911 system in Kansas and ensure this vital public safety system.

In addition to the changes to the existing 911 statutes, SB 50 addresses one crucial element in the process necessary to update Kansas' 911 statutes: the collection of the Enhanced 911 (E911) fee on prepaid wireless service by retailers at the point of sale. This change alone is projected to collect revenues that would increase 911 funding by an additional \$1.2M each year and help ensure adequate funding of the 911 system in the State of Kansas.

Under current Kansas law, the wholesalers of prepaid wireless products remit 1% of their total annual sales to the 911 fund. Unfortunately, the imposition of the current fee at the wholesale level creates several compliance and administrative problems for carriers who sell prepaid wireless through third-party retailers. Wireless providers have no way to embed the fee in the wholesale price of the service because prepaid cards are sold and distributed nationally. Carriers have no way to know where cards sold at wholesale will end up being sold. As a result, carriers in Kansas pay out of their revenues instead of imposing the fee on the prepaid end user who benefits from the ability to call 911.

SB 50 would impose a 1% fee on all prepaid wireless products sold at retail in Kansas which would be remitted to the Department of Revenue (DOR) just as sales tax are currently remitted. The DOR will transfer those funds to the 911 state fund administrator to support the 911 system.

The wireless industry has partnered with law enforcement, the National Emergency Number Association (NENA), counties and cities in 13 states to recently pass legislation allowing for the collection of the prepaid E911 fee at the point of sale. The National Conference of State Legislatures (NCSL) adopted a model point of sale bill and resolution in 2009 because policy makers determined that prepaid end users should contribute to state 911 funds. A list of the states that have passed prepaid point of sale legislation is attached.

The key to maintaining the most effective 911 system in Kansas is a consistent and reliable source of funding. The passage of SB 50 will ensure that all users of wireless communications services contribute equitably to the funding of the Kansas 911 system while making the method for the collection of such fees as simple as possible for retailers in the State.

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Unlike last year's legislation, SB 50 does not include an allowance for retailers to maintain a percentage of their sales on prepaid products to cover their costs of collecting and remitting the fee. However, it does allow retailers that sell less than \$50 per month of prepaid products to remit those E911 fees on a bi-annual basis to the DOR.

With the increase in prepaid wireless usage, making up almost 18% of the total wireless market share, it is more important than ever to ensure that prepaid wireless end users are contributing equitably to the Kansas 911 fund. The projection of \$1.2M in new funding from prepaid wireless 911 fees is attached to this testimony.

In conclusion, Sprint supports SB 50 because it improves the collection process for prepaid wireless products and increases funding for the Kansas 911 system which benefits the public safety of our citizens. I encourage the Committee to pass SB 50 and I would be happy to answer any questions.

Thank you.

States that have Enacted Prepaid Point of Sale Legislation:

- ME LD 1056 (effective date 1/1/2010)
- LA HB 856 (effective date 1/1/2010)
- TX HB 1831 (effective date 6/1/2010)
- IN HB 1086 (signed 3/25/2010; effective date 7/1/2010)
- SC H 4551 (signed 3/30/2010; effective date 7/1/2011)
- VA HB 754 (signed 4/11/2010; effective date 1/1/2011)
- TN SB 2497 (signed 4/16/2010; effective date 7/1/2011)
- OK HB 2556 (signed 5/4/2010; effective date 1/1/2011)
- MS SB 2938 (signed 5/13; effective date 7/1/2010)
- CO SB 120 (signed 6/7/2010; effective date 1/1/2011)
- RI HB7397, Article 9 (became law 6/12/10; effective date 8/1/2010)
- DC Bill 18-0731 (signed 7/2/2010; effective date 10/1/2010)
- PA HB 2321 (signed 11/23/2010; effective date 7/1/2011)

Kansas Prepaid Wireless Point of Sale 911 Revenue Worksheet (December 2010 Update)

FCC Reported Subscribers (Postpaid and Prepaid) as of Dec. 2009 Source: FCC Local Competition Report December 2009	2,466,000
Assumed 1% increase December 2009 to December 2010 CTIA and analyst estimates	24,660
Estimated Kansas Wireless Subscribers 12/2010	2,490,660
Estimated Prepaid Wireless Market Share 12/10 CTIA national estimate is 20.5%; KS estimate is 2.84 percentage points lower based on actual carrier data from 7/09	17.7%
Estimated KS Prepaid Subscribers 12/10 from FCC Data	439,851
Monthly Revenue @ \$27.50 avg. revenue per month Morgan Stanley estimate, 9 11 2009 "Telecom Services" report	\$12,095,902
Proposed % fee	1.10%
monthly revenue months	\$ 133,055 X 12
annual revenue before deduction	\$ 1,596,657
Less 1% holdback for the DOR	\$ 15,966
Less DOR one time fee	\$ 70,000
911 Revenue from Prepaid Wireless	\$ 1,510,691

This estimate compares to less than \$350,000 that was remitted to the state on prepaid wireless in fiscal year 2009.



To: House Committee on Energy and Utilities
From: Kim Winn, Deputy Director
Date: March 11, 2011
Re: Sub for SB 50

Thank you for the opportunity to appear today regarding Sub. SB 50. Since 1995, all 627 cities in Kansas and all 105 counties in Kansas have had a mandate from the state to provide for 24-hour 911 services (K.S.A. 12-5307). Our member cities consider this obligation one of the most important duties of a local government. In addition, cities and counties across the state have worked together to provide this service demonstrating the ability to look past political boundaries for the safety of the citizens of Kansas. We believe that 911 legislation at the state level should model and promote this type of intergovernmental cooperation as well.

In 2009, this Committee asked the League, the Kansas Association of Counties (KAC), and the telecommunications industry to get together during the interim and attempt to develop a model for moving 911 forward in Kansas. After many hours of difficult negotiation, agreement was reached. This agreement was subsequently endorsed by the interim committee that was studying the issue, by this House Committee, and ultimately by the entire House of Representatives. The Senate did not accept this approach and this year has forwarded Sub for SB 50 to you for consideration.

While we believe that Sub for SB 50 is a step in the direction of resolving some of the existing issues regarding 911 services in Kansas, we are concerned about the level of state bureaucracy that is created in the bill and the safety of the funds that are being collected for this purpose. In a number of key areas, SB 50 strays from the agreement reached by the interested parties and adopted by the House. We are offering for your consideration, a number of amendments to bring SB 50 closer to the version that was adopted by the House during the 2010 Legislative Session. All of our recommended changes come out of last year's House bill (House Sub for Sub for SB 48).

- **LCPA.** A number of years ago, a compromise was struck between the telecommunications industry, the League, and the KAC regarding wireless 911 funds. The telecommunications industry wanted a central repository for the money. Cities and counties wanted the moneys returned directly to them so that it could not be swept or used for any other purpose. The compromise that was reached established the League and the KAC as the "Local Collection Point Administrator." Together, we have been collecting the wireless 911 local fees and distributing them to PSAPs since 2004. The compromise that was reached last year by all parties extended this process to wireline as well.

Currently, SB 50 removes the League and the KAC from the law and authorizes the 911 coordinating council to select an LCPA to collect these funds. Because

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we are dealing with tax dollars, we believe that it is critical that these funds be collected by a governmental entity, subject to open meetings laws, open records laws, governmental accounting standards, etc. Further, we believe that the current model has worked well since 2004 and there is no need to reinvent the wheel. The current system provides a natural check and balance between the two associations and promotes intergovernmental cooperation between cities and counties. And, most importantly, keeps the money from flowing through the state in any way.

For these reasons, we are recommending that the compromise language, as established by the House last year, be reinstated with regard to the LCPA.

- **Coordinating Council.** SB 50 greatly expanded both the size and the authority of the 911 coordinating council. It includes 12 voting members, 9 non-voting members, and 4 legislators. In addition, the chair of the coordinating council has been designated to serve as the "statewide 911 coordinator" and serves with compensation as established by the Governor. The coordinating council's role has been expanded to include selection of the LCPA, setting standards, assessing civil penalties, distributing grants, raising or lowering the 911 fee, appointing subcommittees, hiring independent contractors, state agencies, and consultants, and other oversight duties.

While we understand and support the need for statewide coordination in some capacity, the 911 coordinating council as established in SB 50 goes far beyond what was agreed to and adopted in the House last year. We believe that this is unnecessary and unwarranted state bureaucracy and we would suggest that the coordinating council be returned to the version adopted by the House last year. The House version allowed for a committee of 12 members and 6 legislators. The purpose of this council is to provide general guidance at the state level, distribute grants, and adopt rules and regulations as necessary to enforce civil penalties. This is very much in line with the advisory committee that exists today.

- **Grant Funds.** SB 50 establishes two grant funds, both in the state treasury. The first fund is the "federal" grant fund. These provisions are simply unnecessary. The State of Kansas applied for a federal grant several years ago (no statutory authorization was required for this). I serve as a member of the advisory board for this grant and its purpose is to establish pilot projects to consider the technical challenges that will be faced by PSAPs with regard to Next Generation services. This is not a grant fund that distributes monies to PSAPs for any other purpose. Also, this grant will expire in August of 2012.

The next section of the bill establishes a state "maintenance" fund in the state treasury. Because both of these funds would run through the state treasury, they would be subject to being swept. Therefore, we recommend that the grant fund be established in the same manner as it was last year in the House version of SB 48.

- **Fee.** When all of the interested parties came to agreement on 911 legislation, the amount of the fee was \$.55. This is the level at which PSAPs are held harmless so that they can continue to maintain the current 911 system and begin to plan for the future. We support the return of the fee to \$.55
- **Clean-Up.** The remaining amendments that we offer are clean-up in nature.

As I mentioned at the outset, the provision of 911 services in Kansas is one of the most important duties of local government. Our citizens depend on us to provide this service in the most efficient and effective manner possible. We believe that with the amendments that we have offered today, this legislation could move Kansas forward in this very critical area of public safety.

Again, thank you for the opportunity to appear today and I would be happy to answer questions at the appropriate time.

[As Amended by Senate Committee of the Whole]
Session of 2011
SUBSTITUTE FOR SENATE BILL No. 50
By Committee on Utilities
2-23

Proposed Amendments

5-5
4-7

AN ACT concerning emergency communications service; relating to fees, charges, collection and distribution; amending K.S.A. 2010 Supp. 12-5327, 12-5338, 12-5361, 45-221 and 75-5133 and repealing the existing sections; also repealing K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and 12-5309 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) Sections 1 through 19 and 25, and amendments thereto, shall be known and may be cited as the Kansas 911 act.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 2. As used in the Kansas 911 act:

(a) "Consumer" means a person who purchases prepaid wireless service in a retail transaction.

(b) "Department" means the Kansas department of revenue.

(c) "Enhanced 911 service" or "E-911 service" means an emergency telephone service that generally may provide, but is not limited to, selective routing, automatic number identification and automatic location identification features.

(d) "Exchange telecommunications service" means the service that provides local telecommunications exchange access to a service user.

(e) "Governing body" means the board of county commissioners of a county or the governing body of a city.

(f) "Kansas association of counties" or "KAC" means the statewide association of counties established by K.S.A. 19-2690, and amendments thereto.

(g) "Local collection point administrator" or "LCPA" means, on

~~the effective date of this act, the statewide association of cities established by K.S.A. 12-1610e, and amendments thereto, and the statewide association of counties established by K.S.A. 19-2690, and amendments thereto. After January 1, 2012, "local collection point administrator" means the person designated by the 911 coordinating council to serve as the local collection point administrator to collect and distribute 911 fees and 911 state grant fund moneys.~~

(h) "Next generation 911" means 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet Protocol (IP) based technologies and applications that may include text messaging, image, video and data information from callers.

(i) "Person" means any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, nonprofit organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy or any other legal entity.

(j) "Prepaid wireless service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

(k) "Place of primary use" has the meaning provided in the mobile telecommunications act as defined by 4 U.S.C. § 116 et seq., as in effect on the effective date of this act.

(l) "Provider" means any person providing exchange telecommunications service, wireless telecommunications service, VoIP service or other service capable of contacting a PSAP.

(m) "PSAP" means a public safety answering point operated by a city or county.

(n) "Retail transaction" means the purchase of prepaid wireless service from a seller for any purpose other than resale, not including the use, storage or consumption of such services.

(o) "Seller" means a person who sells prepaid wireless service to another person.

(p) "Service user" means any person who is provided exchange telecommunications service, wireless telecommunications service, VoIP service, prepaid wireless service or any other service capable of

LCPA: Reinstate current law with regard to the Local Collection Point Administrator by deleting this language.

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contacting a PSAP.

(q) "Subscriber account" means the 10-digit access number assigned to a service user regardless of whether more than one such number is aggregated for the purpose of billing a service user.

(r) "Subscriber radio equipment" means mobile and portable radio equipment installed in vehicles or carried by persons for voice communication with a radio system.

(s) "VoIP service" means voice over internet protocol.

(t) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. 20.3 as in effect on the effective date of this act.

~~New Sec. 3. (a) (1) There is hereby created the 911 coordinating council which shall monitor the delivery of 911 services; develop strategies for future enhancements to the 911 system and distribute available grant funds to PSAPs. In as much as possible, the council shall include individuals with technical expertise regarding 911 systems, internet technology and GIS technology.~~

~~(2) The 911 coordinating council shall consist of 12 voting members to be appointed by the governor: Two members representing information technology personnel from government units; one member representing a law enforcement officer; one member representing a fire chief; one member recommended by the adjutant general; one member recommended by the Kansas emergency medical services board; one member recommended by the Kansas commission for the deaf and hard of hearing; two members representing PSAPs located in counties with less than 75,000 in population; two members representing PSAPs located in counties with greater than 75,000 in population; and one member representing PSAPs without regard to size.~~

~~(3) Other voting members of the 911 coordinating council shall include: One member of the Kansas house of representatives as appointed by the speaker of the house; one member of the Kansas house of representatives as appointed by the minority leader of the house; one member of the Kansas senate as appointed by the senate president; and one member of the Kansas senate as appointed by the senate minority leader.~~

~~(4) The 911 coordinating council shall also include non-voting members to be appointed by the governor: One member representing rural telecommunications companies recommended by the Kansas rural independent telephone companies; one member representing incumbent~~

Coordinating Council: Reinstate the Coordinating Council as established by the House version of SB 48.

New Sec. 3

(a) There is hereby created a 911 coordinating council which shall monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system, and distribute available grant funds to PSAPs. In as much as possible, the 911 coordinating council shall include individuals with technical expertise regarding 911 system, internet technology, and GIS technology. The coordinating council shall consist of 12 members to be appointed by the governor: Two members representing wireless telecommunications providers; one member representing a local exchange provider to be recommended by the Kansas telecommunications industry association; one member representing a rural telecommunications company recommended by the Kansas rural independent telephone companies; one member representing VoIP provider; two members recommended by the League of Kansas Municipalities; two members recommended by the Kansas Association of Counties; one member recommended by the Kansas Commission for the deaf and hard of hearing; one member recommended by the Kansas emergency medical services board; and, one member recommended by the adjutant general. The council shall also include two members of the Kansas House of Representatives as appointed by the speaker of the house; one member of the Kansas House of Representatives as appointed by the minority leader of the house; two members of the Kansas Senate as appointed by the senate minority leader. The governor shall designate one member as chair of the council.

(b) The terms of the office for members of the 911 coordinating council shall commence January 1, 2012 and shall be subject to reappointment every three years.

(c) The 911 coordinating council is hereby authorized to adopt rules and regulations necessary for effectuation of the provisions of this act, including, but not limited to, assess civil penalties.

(d) No civil penalty shall be imposed pursuant to this section except upon the written order of the 911 coordinating council. Such order shall state the violation, the penalty to be imposed and the right of such provider to appeal the penalty in accordance with the provisions of the Kansas administrative procedure act.

(e) Any civil penalty recovered pursuant to this section shall be deposited with the LCPA grant fund.

local exchange carriers with over 50,000 access lines; one member representing large wireless providers; one member representing VoIP providers; one member recommended by the league of Kansas municipalities; one member recommended by the Kansas association of counties; one member recommended by the Kansas geographic information systems policy board; one member recommended by KAN-ED; one member recommended by the Kansas division of information systems and communications; and one member, a Kansas resident, recommended by the Mid-America regional council.

(b) The terms of office for voting members of the 911 coordinating council shall commence on the effective date of this act and shall be subject to reappointment every three years. No voting member shall serve longer than two three-year terms. A voting member appointed as a replacement for another voting member may finish the term of the predecessor and may serve two additional three-year terms.

(c) (1) The governor shall select the chair of the 911 coordinating council. The governor shall determine the chair's compensation and the chair shall serve at the pleasure of the governor.

(2) The chair shall serve as the coordinator of E-911 services and next generation 911 services in the state, implement statewide 911 planning, have the authority to sign all certifications required under 47 C.F.R. part 400 and administer the 911 federal grant fund and 911 state maintenance fund. The chair shall serve subject to the direction of the council and ensure that policies adopted by the council are carried out. The chair shall serve as the liaison between the council and the LCPA. The chair shall preside over all meetings of the council and assist the council in effectuating the provisions of this act.

(d) The 911 coordinating council shall select the local collection point administrator, pursuant to section 6, and amendments thereto, to collect 911 fees and to distribute such fees to PSAPs and to distribute 911 state grant fund moneys as directed by the council. The council shall determine the compensation of the LCPA. The Kansas association of counties shall provide the council with any staffing necessary in carrying out the business of the council or effectuating the provisions of this act. Upon approval by the council, the KAC shall be reimbursed for any costs incurred in assisting the council. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(e) The 911 coordinating council is hereby authorized to adopt

(a) So long as the provider is working in good faith to comply with the provisions of this act, no civil penalty shall be imposed prior to January 1, 2013.

(b) The LCPA shall provide staff support to the 911 coordinating council. Members of the 911 coordinating council may receive reimbursement for meals and travel expenses, but shall serve without other compensation. All expenses related to the 911 coordinating council shall be paid from the LCPA grant fund.

(c) This section shall take effect on and after January 1, 2012.

rules and regulations necessary to effectuate the provisions of this act, including, but not limited to, creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAPs, requiring service providers to notify the council pursuant to subsection (j); setting standards for coordinating and purchasing equipment; recommending standards for training of PSAP personnel and assessing civil penalties. The chair of the council shall work with the council to develop rules and regulations necessary for the distribution of moneys in the 911 federal grant fund. The council shall work with the chair to carry out the provisions of this act. Rules and regulations necessary to begin administration of this act shall be adopted by December 31, 2011.

(f) The council may, pursuant to rules and regulations, raise or lower the 911 fee upon a finding based on information submitted on the uniform reporting forms, that moneys generated by such fee are in excess of or below the costs required to operate PSAPs in the state. The council shall not set the 911 fee below \$.50 or above \$.60.

(g) The council may appoint subcommittees as necessary to administer grants, oversee collection and distribution of moneys by the LCPA, develop technology standards, develop training recommendations and other issues as deemed necessary by the council. Subcommittees, if appointed, shall include members of the council and other persons as needed.

(h) The council may reimburse independent contractors or state agencies for expenses incurred in carrying out the business of the council, including salaries, that are directly attributable to effectuating the provisions of this act. The moneys used to reimburse these expenses shall be paid from the 911 state grant fund, pursuant to subsection (i).

(i) All expenses related to the council shall be paid from the 911 state grant fund. No more than 2% of the total receipts from providers and the department received by the LCPA shall be used to pay for such expenses. Members of the council may receive reimbursement for meals and travel expenses, but shall serve without other compensation with the exception of legislative members.

(j) Every provider shall submit contact information for the provider to the council prior to January 1, 2012. Any provider that has not previously provided wireless telecommunications service in this state shall submit contact information for the provider to the council within three months of first offering wireless telecommunications

services in this state:

- (k) Each PSAP shall file with the council, by March 1, 2012, a report demonstrating how such PSAP has spent the moneys earned from the 911 fee. The council shall designate the content and form of such report.
 - (l) The council, upon a finding that a provider has violated any provision of this act, may impose a civil penalty. No civil penalty shall be imposed pursuant to this section except upon the written order of the council. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the council. Any such person may, within 15 days after service of the order, make a written request to the council for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.
 - (m) Any action of the council pursuant to subsection (l) is subject to review in accordance with the Kansas judicial review act.
 - (n) Any civil penalty recovered pursuant to this section shall be transferred to the LCPA for deposit in the 911 state grant fund.
 - (o) As long as the provider is working in good faith to comply with the provisions of this act, no civil penalty shall be imposed prior to January 1, 2013.
 - (p) The 911 coordinating council shall make an annual report, to include a detailed description of all expenditures of the PSAPs, to the house committee on energy and utilities and the senate committee on utilities.
- New Sec. 4. (a) There is hereby established in the state treasury the 911 federal grant fund:
- (b) The chair of the 911 coordinating council shall serve as the administrator of the 911 federal grant fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.
 - (c) Moneys received by the state from the federal government for the purposes of the fund shall be credited to the fund.
 - (d) Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, moneys credited to the fund shall be used only:
 - (i) To pay all expenses incurred in the administration of the fund;

Federal Grant Fund: New Section 4 is unnecessary. The federal grant exists today and is designed to allow for pilot projects, not to funnel monies to PSAPs. This particular grant will expire in August of 2012. If monies become available in the future, the state, the 911 coordinating council, or PSAPs themselves could apply for such funds without statutory authorization or limitation.

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and

(2) to provide grants to eligible municipalities only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (A) implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(c) All payments and disbursements from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chair or by a person or persons designated by the chair.

New Sec. 5. (a) There is hereby established in the state treasury the 911 state maintenance fund.

(b) The chair of the 911 coordinating council shall serve as the administrator of the 911 state maintenance fund and shall distribute grants in accordance with the recommendations of the 911 coordinating council. Subject to the conditions and in accordance with the requirements of this act and 47 C.F.R. part 400, the chair is authorized to perform such acts necessary for the effectuation of this act.

(c) Moneys from the following sources shall be credited to the fund:

- (1) Amounts appropriated or otherwise made available by the legislature for the purposes of the fund;
- (2) interest attributable to investment of moneys in the fund; and
- (3) amounts received from any public or private entity for the purposes of the fund;

(d) Moneys credited to the fund shall be used only:

- (1) To pay all expenses incurred in the administration of the fund;
- and
- (2) to provide grants to eligible municipalities only for necessary

Grant Fund; Reinstate House version in order to keep the money out of the state treasury.

New Section 5:

- (a) *The LCPA shall establish and maintain a grant fund for PSAPs, which shall not be part of the state treasury. Such money and any interest earned on such money may only be expended for the following purposes: projects involving the development of next generation 911 services; costs associated with PSAP consolidation or cost-sharing projects; expenses related to the 911 coordinating council; the costs of audits conducted pursuant to section 16 on its effective date, and amendments thereto; and other purposes as defined in section 14 on its effective date, and amendments thereto.*
- (b) *The 911 coordinating council shall develop criteria for grant applicants and make the final determination as to the distribution of grant funds.*

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and reasonable costs incurred or to be incurred by PSAPs for: (A) Implementation of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; (B) purchase of equipment and upgrades and modification to equipment used solely to process the data elements of enhanced 911 service and next generation 911 service, as defined in section 2, and amendments thereto; and (C) maintenance and license fees for such equipment and training of personnel to operate such equipment, including costs of training PSAP personnel to provide effective service to all users of the emergency telephone system who have communications disabilities. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities or for other capital outlay or equipment not expressly authorized by this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the 911 state maintenance fund interest earnings based on:

(1) The average daily balance of moneys in the 911 state maintenance fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(f) All payments and disbursements from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chair or by a person or persons designated by the chair.

New Sec. 6. The 911 coordinating council shall select the local collection point administrator. In selecting the LCPA, the council shall contract with the LCPA for services for no longer than one year. The council shall annually review the designation of the LCPA and the contract with the LCPA for services.

New Sec. 7. (a) Upon the advice and consent of the 911 coordinating council, the LCPA shall establish the 911 state fund and the 911 state grant fund which shall not be part of the state treasury. On or after the effective date of this section, the secretary of administration shall certify all unobligated funds remaining in the wireless enhanced 911 grant fund as having originated as either federal grant moneys or 911 fee moneys. All such moneys originating from 911 fees, and any interest accrued on such fees, shall be paid to the LCPA for deposit in the 911 state grant fund. All unobligated federal moneys, and any

interest accrued on such moneys, shall be transferred to the 911 federal grant fund:

(b) The council shall be responsible for ensuring that the 911 state grant fund and any interest earned on money credited to the fund is only expended for the following purposes: (1) Projects involving the development and implementation of next generation 911 services; (2) costs associated with PSAP consolidation or cost-sharing projects; (3) expenses related to the 911 coordinating council; (4) costs of audits conducted pursuant to section 16, and amendments thereto; and (5) other costs pursuant to section 14, and amendments thereto.

(c) The council shall develop criteria for eligible purchases and for grant applicants and make the final determination as to the distribution of grant funds. Such criteria shall promote the procurement of equipment that meets open architecture and national technical standards. Distribution of grant funds shall not include expenditures to procure, maintain or upgrade subscriber radio equipment.

(d) The LCPA shall be authorized to maintain an action to collect any funds owed by any providers in the district court in the county of the registered office of such provider or, if such provider does not have a registered office in the state, such an action may be maintained in the county where such provider's principal office is located. If such provider has no principal office in the state, such an action may be maintained in the district court of any county in which such provider provides service.

(e) This section shall take effect on and after January 1, 2012.

New Sec. 8. (a) There is hereby imposed a 911 fee in the amount of \$.50 per month per subscriber account of any exchange telecommunications service, wireless telecommunications service, VoIP service, or other service capable of contacting a PSAP. Such fee shall not be imposed on prepaid wireless service. It shall be the duty of each exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider to remit such fees to the LCPA as provided in section 9, and amendments thereto.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 9. (a) Every billed service user shall be liable for the 911 fee until such fees have been paid to the exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider or other service provider.

Fee: Recommend setting the fee at \$.55.

(b) The duty to collect the fees imposed pursuant to this act shall commence January 1, 2012. Such fees shall be added to and may be stated separately in billings for the subscriber account. If stated separately in billings, the fees shall be labeled "911 fees."

(c) The provider shall have no obligation to take any legal action to enforce the collection of the fees imposed by this act. The provider shall provide annually to the LCPA a list of the amount of uncollected 911 fees along with the names and addresses of those service users which carry a balance that can be determined by the provider to be nonpayment of such fees.

(d) The fees imposed by this act shall be collected insofar as practicable at the same time as, and along with, the charges for local exchange, wireless, VoIP, or other service in accordance with regular billing practice of the provider.

(e) The 911 fees and the amounts required to be collected therefor are due monthly. The amount of such fees collected in one month by the provider shall be remitted to the LCPA not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the LCPA. Such return shall be in such form and shall contain such information as required by the LCPA. The provider required to file the return shall deliver the return together with a remittance of the amount of fees payable to the LCPA. The provider shall maintain records of the amount of any such fees collected in accordance with this act for a period of three years from the time the fees are collected.

(f) The provisions of this section shall not be construed to apply to prepaid wireless service.

~~(g)~~ This section shall take effect on and after January 1, 2012.

New Sec. 10. (a) There is hereby imposed a prepaid wireless 911 fee of 1.1% ~~1.1%~~ per retail transaction or, on and after the effective date of an adjusted amount per retail transaction that is established under subsection (f), such adjusted amount.

(b) The prepaid wireless 911 fee shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless 911 fee shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

LCPA: Reinstate administrative fees to mirror House version of SB 48.

(g) The provider may retain an administrative fee of not more than 2% of moneys collected from such fee. The LCPA may retain an administrative fee of not more than 2% of the moneys collected from such fee.

(h) renumber accordingly.

Fee: To remain consistent with the above change to move the fee to \$.55, the fee on prepaid services should be returned to 1.1%.

(c) For purposes of subsection (b), a retail transaction that is effected in person by a consumer in a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for the purposes of subsection (c)(3) of K.S.A. 79-3673, and amendments thereto.

(d) The prepaid wireless 911 fee is the liability of the consumer and not of the seller nor of any provider, except that the seller shall be liable to remit all prepaid wireless 911 fees that the seller collects from consumers pursuant to this section, and amendments thereto, including all such fees that the seller is deemed to collect where the amount of the charge has not been separately stated in an invoice, receipt or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless 911 fee that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

(f) The prepaid wireless 911 fee shall be proportionately increased or reduced, as applicable, upon any change to the fee imposed by subsection (a) of section 8, and amendments thereto. The adjusted amount shall be determined by dividing the amount of the fee imposed by subsection (a) of section 8, and amendments thereto, by \$50. Such increase or reduction shall be effective on the effective date of the change to the fee imposed by subsection (a) of section 8, and amendments thereto, or, if later, the first day of the calendar quarter to occur at least 60 days after the enactment to the change to the fee imposed by subsection (a) of section 8, and amendments thereto. The department shall provide not less than 60 days' notice of such increase or decrease on the department's website.

(g) When prepaid wireless service is sold with one or more other products or services for a single, non-itemized price, then the percentage specified in subsection (a) shall apply to the entire nonitemized price unless the seller elects to apply such percentage to: (1) If the amount of the prepaid wireless service is disclosed to the consumer is a dollar amount, such dollar amount; or (2) if the seller can identify the portion of the price that is attributable to the prepaid wireless

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service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes, such portion.

(h) This section shall take effect on and after January 1, 2012.

New Sec. 11. (a) Prepaid wireless 911 fees collected by sellers shall be remitted to the department by electronic filing that is consistent with the provisions of article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. The department shall establish registration and payment procedures for the collection of the prepaid wireless 911 fee.

(b) To minimize additional costs to the department, the department may conduct audits of sellers in conjunction with sales and use tax audits. The department is authorized to provide the LCPA with information obtained in such audits if such information indicates that a seller may not be complying with the provisions of this section and section 10, and amendments thereto. The LCPA may request the department to initiate collection or audit procedures on individual sellers if collection efforts by the LCPA are unsuccessful.

(c) The department shall establish procedures by which a seller may document that a sale is not a retail sale, which procedures shall substantially coincide with procedures for documenting sale for resale transactions for article 36 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

(d) The department shall transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt ~~for distribution as provided in section 13, and amendments thereto.~~

(e) The department may retain up to \$70,000 of remitted funds in fiscal year 2012 only for use in paying for programming and other onetime costs for establishing a system for collecting the prepaid wireless 911 fee.

(f) This section shall take effect on and after January 1, 2012.

New Sec. 12. (a) The prepaid wireless 911 fee imposed in this act shall be the only 911 funding obligation imposed with respect to prepaid wireless service in this state. No tax, fee, surcharge or other charge shall be imposed by this state, any political subdivision of this state or any intergovernmental agency for 911 funding purposes upon any prepaid wireless service provider, seller or consumer with respect to the sale, purchase, use or provision of prepaid wireless service.

(b) This section shall take effect on and after January 1, 2012.

Grant fund: Reinstate House version to keep monies out of the state treasury.

Add to subsection (d)

The LCPA shall deposit all such funds into the LCPA grant fund.

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New Sec. 13. (a) Not later than 30 days after the receipt of moneys from providers pursuant to sections 9 and 10, and amendments thereto, and the department pursuant to section 11, and amendments thereto, the LCPA shall distribute such moneys to PSAPs based upon the following distribution method: In a county with a population over 80,000, 82% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 65,000 and 79,999, 85% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 55,000 and 64,999, 88% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 45,000 and 54,999, 91% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 35,000 and 44,999, 94% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; in a county with a population between 25,000 and 34,999, 97% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information; and in a county with a population of less than 25,000, 100% of the money collected from service users whose place of primary use, as provided by the providers, is within the county shall be distributed to the PSAPs within the county based on place of primary use information. There shall be a minimum county distribution of \$50,000 and no county shall receive less than \$50,000 of direct distribution moneys. If there is more than one PSAP in a county then the direct distribution allocated to that county by population shall be deducted from the minimum county distribution and the difference shall be proportionately divided between the PSAPs in the county. All moneys remaining after distribution and any moneys which cannot be

attributed to a specific PSAP shall be transferred to the ~~911 state grant~~ fund.

(b) All fees remitted to the LCPA shall be ~~deposited in the 911 state fund and for the purposes of this act be treated as if they are public funds, pursuant to article 14 of chapter 9 of the Kansas Statutes Annotated, and amendments thereto.~~

(c) ~~All moneys in the 911 state fund that have been collected from the prepaid wireless 911 fee shall be deposited in the 911 state grant fund unless \$2 million of such moneys have been deposited in any given year then all remaining moneys shall be distributed to the PSAPs pursuant to subsection (a).~~

(d) The LCPA shall keep accurate accounts of all receipts and disbursements of moneys from the 911 fees.

(e) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to this act will be treated as proprietary records which will be withheld from the public upon request of the party submitting such records.

(f) The provisions of subsection (e) shall expire on July 1, 2017, unless the legislature acts to reenact such provision. The provisions of subsection (e) shall be reviewed by the legislature prior to July 1, 2016.

(g) This section shall take effect on and after January 1, 2012.

New Sec. 14. (a) The proceeds of the 911 fees imposed pursuant to this act, and any interest earned on revenue derived from such fee, shall be used only for necessary and reasonable costs incurred or to be incurred by PSAPs for: (1) Implementation of 911 services; (2) purchase of 911 equipment and upgrades; (3) maintenance and license fees for 911 equipment; (4) training of personnel; (5) monthly recurring charges billed by service suppliers; (6) installation, service establishment and nonrecurring start-up charges billed by the service supplier; (7) charges for capital improvements and equipment or other physical enhancements to the 911 system; or (8) the original acquisition and installation of road signs designed to aid in the delivery of emergency service. Such costs shall not include expenditures to lease, construct, expand, acquire, remodel, renovate, repair, furnish or make improvements to buildings or similar facilities. Such costs shall also not include expenditures to purchase subscriber radio equipment.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 15. (a) Except as provided by the Kansas tort claims act, and except for failure to use ordinary care, or for intentional acts,

Grant Fund: Correct Reference

Grant Fund: Correct Reference

Grant Fund: Return to House version where the prepaid wireless fees are sent to the LCPA and deposited in the grant fund.

the LCPA and each provider, and their employees and agents, and each seller, and their employees and agents, shall not be liable for the payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining or providing 911 service.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 16. (a) The receipts and disbursements of the LCPA shall be audited yearly by a licensed municipal accountant or certified public accountant.

(b) The LCPA may require an audit of any provider's books and records concerning the collection and remittance of fees pursuant to this act. The cost of any such audit shall be paid from the ~~911 state~~ grant fund.

(c) On or before December 31, 2013, and at least once every three years thereafter, the division of post audit shall conduct an audit of the 911 system to determine: (1) Whether the moneys received by PSAPs pursuant to this act are being used appropriately; (2) whether the amount of moneys collected pursuant to this act is adequate; and (3) the status of 911 service implementation. The auditor to conduct such audit shall be specified in accordance with K.S.A. 46-1122, and amendments thereto. The post auditor shall compute the reasonably anticipated cost of providing audits pursuant to this subsection, subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon such approval, the ~~911 state~~ grant fund shall reimburse the division of post audit for the amount approved by the contract audit committee. The audit report shall be submitted to the 911 coordinating council, the LCPA, the house energy and utilities committee and the senate utilities committee.

~~(d) The legislature shall review this act at the regular 2014 legislative session and at the regular legislative session every five years thereafter.~~

(e) This section shall take effect on and after January 1, 2012.

New Sec. 17. (a) Nothing in this act shall be construed to limit the ability of a provider from recovering directly from the provider's customers its costs associated with designing, developing, deploying and maintaining 911 service and its cost of collection and administration of the fees imposed by this act, whether such costs are itemized on the customer's bill as a surcharge or by any other lawful

Grant Fund: Correct reference.

Grant Fund: Correct Reference

Clean-Up: Unnecessary. The Legislature can and should review the act whenever a relevant issue arises.

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method.

(b) This section shall take effect on and after January 1, 2012.

New Sec. 18. A provider of wireless telecommunications service shall: (1) Receive prior approval of the PSAP of that jurisdiction before directing emergency calls to such PSAP; and (2) establish the unique emergency telephone number "911" across the state, excluding the Kansas turnpike assistance telephone number.

New Sec. 19. The governing body of each city and county shall provide or contract for the 24-hour receipt of wireless emergency calls for all wireless service areas within the jurisdiction of the city or county.

~~Sec. 20. K.S.A. 2010 Supp. 12-5327 is hereby amended to read as follows: 12-5327. (a) After providing for public comment and review each year, the secretary, in conjunction with the advisory board, shall prepare a plan identifying the intended uses of the moneys available in the fund. The intended use plan shall include, but not be limited to:~~

- ~~(a) (1) The wireless enhanced 911 project priority list;~~
- ~~(b) (2) a description of the short-term and long-term goals and objectives of the fund for the deployment of wireless enhanced 911;~~
- ~~(c) (3) provisions addressing the needs of persons with communication disabilities;~~
- ~~(d) (4) information on the projects to be financed, including a description thereof, the terms of grants to be provided and the municipalities receiving the grants; and~~
- ~~(e) (5) the criteria and method established for the provision of grants to be made from the fund.~~

~~(b) Notwithstanding the provisions of subsection (a), moneys in the fund shall be used to pay any expenses authorized by this act incurred by the 911 coordinating council in effectuating the provisions of this act.~~

Sec. 21. K.S.A. 2010 Supp. 12-5338 is hereby amended to read as follows: 12-5338. (a) On July *January* 1, 2011 *2012* ;

(1) the wireless enhanced 911 grant fee shall be discontinued, the advisory board shall be abolished, any unobligated balance of the wireless enhanced 911 grant fund shall be paid to the local collection point administrator for distribution to PSAP's based on the population of the municipality or municipalities served by the respective PSAP *distributed pursuant to subsection (a) of section 7, and amendments thereto*, and the fund shall be abolished.

Clean-Up: This statute was designed to provide guidance for the state grant fund in order to help PSAPs achieve wireless enhanced 911. All PSAPs are now Phase II compliant, making this statute unnecessary.

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(2) Within any county which has a population of 125,000 or more, the amount of the tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.25 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee within such jurisdiction shall be an equal amount per month per wireless subscriber account.

(3) Within any county which has a population of less than 125,000 the amount of the tax imposed [pursuant] to K.S.A. 12-5302, and amendments thereto, shall not exceed \$.50 per month per access line or its equivalent and the amount of the wireless enhanced 911 local fee shall be an equal amount per month per wireless subscriber account.

(4) The provisions of K.S.A. 2010 Supp. 12-5323 through 12-5329, and amendments thereto, shall expire.

(b) On and after July 1, 2011, the proceeds of the wireless enhanced 911 local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.

Sec. 22. K.S.A. 2010 Supp. 12-5361 is hereby amended to read as follows: 12-5361. (a) On July *January* 1, 2011 *2012* :

(1) the VoIP enhanced 911 grant fee shall be discontinued.

(2) The amount of the tax per access line or its equivalent imposed within a jurisdiction pursuant to K.S.A. 12-5302, and amendments thereto, and the amount of the VoIP enhanced 911 local fee per VoIP subscriber whose primary residence is within such jurisdiction shall be an equal amount per month.

(3) The provisions of K.S.A. 2010 Supp. 12-5354 and 12-5355, and amendments thereto, shall expire.

(b) On and after July 1, 2011, the proceeds of the VoIP local fee shall be used only to pay for costs of emergency telephone service described in K.S.A. 12-5304, and amendments thereto, and expenditures authorized by K.S.A. 2010 Supp. 12-5330, and amendments thereto.

Sec. 23. K.S.A. 2010 Supp. 45-221 is hereby amended to read as follows: 45-221. (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating

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to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2010 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries or actual compensation employment contracts or employment-related contracts or agreements and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual, except documents relating to the appointment of persons to fill a vacancy in an elected office.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation, except if the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public officer or employee.

(9) Testing and examination materials, before the test or examination is given or if it is to be given again, or records of individual test or examination scores, other than records which show only passage or failure and not specific scores.

(10) Criminal investigation records, except as provided herein.

The district court, in an action brought pursuant to K.S.A. 45-222, and

such conditions as the court may impose, if the court finds that disclosure:

- (A) Is in the public interest;
- (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution;
- (C) would not reveal the identity of any confidential source or undercover agent;
- (D) would not reveal confidential investigative techniques or procedures not known to the general public;
- (E) would not endanger the life or physical safety of any person;
- and
- (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense in article 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

If a public record is discretionarily closed by a public agency pursuant to this subsection, the record custodian, upon request, shall provide a written citation to the specific provisions of paragraphs (A) through (F) that necessitate closure of that public record.

(11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

(12) Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility.

(13) The contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the acquisition of property, prior to the award of formal contracts therefor.

(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or

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which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

(15) Records pertaining to employer-employee negotiations, if disclosure would reveal information discussed in a lawful executive session under K.S.A. 75-4319, and amendments thereto.

(16) Software programs for electronic data processing and documentation thereof, but each public agency shall maintain a register, open to the public, that describes:

(A) The information which the agency maintains on computer facilities; and

(B) the form in which the information can be made available using existing computer programs.

(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.

(18) Plans, designs, drawings or specifications which are prepared by a person other than an employee of a public agency or records which are the property of a private person.

(19) Well samples, logs or surveys which the state corporation commission requires to be filed by persons who have drilled or caused to be drilled, or are drilling or causing to be drilled, holes for the purpose of discovery or production of oil or gas, to the extent that disclosure is limited by rules and regulations of the state corporation commission.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency

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with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(23) Library patron and circulation records which pertain to identifiable individuals.

(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.

(25) Records which represent and constitute the work product of an attorney.

(26) Records of a utility or other public service pertaining to individually identifiable residential customers of the utility or service, except that information concerning billings for specific individual customers named by the requester shall be subject to disclosure as provided by this act.

(27) Specifications for competitive bidding, until the specifications are officially approved by the public agency.

(28) Sealed bids and related documents, until a bid is accepted or all bids rejected.

(29) Correctional records pertaining to an identifiable inmate or release, except that:

(A) The name; photograph and other identifying information; sentence data; parole eligibility date; custody or supervision level; disciplinary record; supervision violations; conditions of supervision, excluding requirements pertaining to mental health or substance abuse counseling; location of facility where incarcerated or location of parole office maintaining supervision and address of a releasee whose crime was committed after the effective date of this act shall be subject to disclosure to any person other than another inmate or releasee, except that the disclosure of the location of an inmate transferred to another state pursuant to the interstate corrections compact shall be at the discretion of the secretary of corrections;

(B) the ombudsman of corrections, the attorney general, law

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enforcement agencies, counsel for the inmate to whom the record pertains and any county or district attorney shall have access to correctional records to the extent otherwise permitted by law; (C) the information provided to the law enforcement agency pursuant to the sex offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall be subject to disclosure to any person, except that the name, address, telephone number or any other information which specifically and individually identifies the victim of any offender required to register as provided by the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall not be disclosed; and

(D) records of the department of corrections regarding the financial assets of an offender in the custody of the secretary of corrections shall be subject to disclosure to the victim, or such victim's family, of the crime for which the inmate is in custody as set forth in an order of restitution by the sentencing court.

(30) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

(31) Public records pertaining to prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the state. This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.

(32) Engineering and architectural estimates made by or for any public agency relative to public improvements.

(33) Financial information submitted by contractors in qualification statements to any public agency.

(34) Records involved in the obtaining and processing of intellectual property rights that are expected to be, wholly or partially vested in or owned by a state educational institution, as defined in K.S.A. 76-711, and amendments thereto, or an assignee of the institution organized and existing for the benefit of the institution.

(35) Any report or record which is made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925, and amendments thereto.

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- (36) Information which would reveal the precise location of an archeological site.
- (37) Any financial data or traffic information from a railroad company, to a public agency, concerning the sale, lease or rehabilitation of the railroad's property in Kansas.
- (38) Risk-based capital reports, risk-based capital plans and corrective orders including the working papers and the results of any analysis filed with the commissioner of insurance in accordance with K.S.A. 40-2c20 and 40-2d20, and amendments thereto.
- (39) Memoranda and related materials required to be used to support the annual actuarial opinions submitted pursuant to subsection (b) of K.S.A. 40-409, and amendments thereto.
- (40) Disclosure reports filed with the commissioner of insurance under subsection (a) of K.S.A. 40-2,156, and amendments thereto.
- (41) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the national association of insurance commissioners' insurance regulatory information system.
- (42) Any records the disclosure of which is restricted or prohibited by a tribal-state gaming compact.
- (43) Market research, market plans, business plans and the terms and conditions of managed care or other third party contracts, developed or entered into by the university of Kansas medical center in the operation and management of the university hospital which the chancellor of the university of Kansas or the chancellor's designee determines would give an unfair advantage to competitors of the university of Kansas medical center.
- (44) The amount of franchise tax paid to the secretary of revenue or the secretary of state by domestic corporations, foreign corporations, domestic limited liability companies, foreign limited liability companies, domestic limited partnership, foreign limited partnership, domestic limited liability partnerships and foreign limited liability partnerships.
- (45) Records, other than criminal investigation records, the disclosure of which would pose a substantial likelihood of revealing security measures that protect: (A) Systems, facilities or equipment used in the production, transmission or distribution of energy, water or communications services; (B) transportation and sewer or wastewater treatment systems, facilities or equipment; or (C) private property or

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persons, if the records are submitted to the agency. For purposes of this paragraph, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination or kidnapping. Security measures include, but are not limited to, intelligence information, tactical plans, resource deployment and vulnerability assessments.

(46) Any information or material received by the register of deeds of a county from military discharge papers (DD Form 214). Such papers shall be disclosed: To the military dischargee; to such dischargee's immediate family members and lineal descendants; to such dischargee's heirs, agents or assigns; to the licensed funeral director who has custody of the body of the deceased dischargee; when required by a department or agency of the federal or state government or a political subdivision thereof; when the form is required to perfect the claim of military service or honorable discharge or a claim of a dependent of the dischargee; and upon the written approval of the commissioner of veterans affairs, to a person conducting research.

(47) Information that would reveal the location of a shelter or a safehouse or similar place where persons are provided protection from abuse or the name, address, location or other contact information of alleged victims of stalking, domestic violence or sexual assault.

(48) Policy information provided by an insurance carrier in accordance with subsection (h)(1) of K.S.A. 44-532, and amendments thereto. This exemption shall not be construed to preclude access to an individual employer's record for the purpose of verification of insurance coverage or to the department of labor for their business purposes.

(49) An individual's e-mail address, cell phone number and other contact information which has been given to the public agency for the purpose of public agency notifications or communications which are widely distributed to the public.

(50) Information provided by providers to the local collection point administrator or to the 911 coordinating council pursuant to the Kansas 911 act, and amendments thereto, upon request of the party submitting such records.

(b) Except to the extent disclosure is otherwise required by law or as appropriate during the course of an administrative proceeding or on

appeal from agency action, a public agency or officer shall not disclose financial information of a taxpayer which may be required or requested by a county appraiser or the director of property valuation to assist in the determination of the value of the taxpayer's property for ad valorem taxation purposes; or any financial information of a personal nature required or requested by a public agency or officer, including a name, job description or title revealing the salary or other compensation of officers, employees or applicants for employment with a firm, corporation or agency, except a public agency. Nothing contained herein shall be construed to prohibit the publication of statistics, so classified as to prevent identification of particular reports or returns and the items thereof.

(c) As used in this section, the term "cited or identified" shall not include a request to an employee of a public agency that a document be prepared.

(d) If a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act. If a public record is not subject to disclosure because it pertains to an identifiable individual, the public agency shall delete the identifying portions of the record and make available to the requester any remaining portions which are subject to disclosure pursuant to this act, unless the request is for a record pertaining to a specific individual or to such a limited group of individuals that the individuals' identities are reasonably ascertainable, the public agency shall not be required to disclose those portions of the record which pertain to such individual or individuals.

(e) The provisions of this section shall not be construed to exempt from public disclosure statistical information not descriptive of any identifiable person.

(f) Notwithstanding the provisions of subsection (a), any public record which has been in existence more than 70 years shall be open for inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or by a policy adopted pursuant to K.S.A. 72-6214, and amendments thereto.

(g) Any confidential records or information relating to security measures provided or received under the provisions of subsection (a)

(45) shall not be subject to subpoena, discovery or other demand in any administrative, criminal or civil action.

Sec. 24. K.S.A. 2010 Supp. 75-5133 is hereby amended to read as follows: 75-5133. (a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax, in accordance with proper judicial order or as provided in K.S.A. 74-2424, and amendments thereto.

(b) The secretary of revenue or the secretary's designee may:

(1) Publish statistics, so classified as to prevent identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or the attorney general's designee;

(3) provide the post auditor access to all such excise tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto;

(4) disclose taxpayer information from excise tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) provide information from returns and reports filed under article 42 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*, to county appraisers as is necessary to insure proper valuations of property. Information from such returns and reports may also be exchanged with any other state agency administering and collecting conservation or other taxes and fees imposed on or measured by mineral production;

(6) provide, upon request by a city or county clerk or treasurer or finance officer of any city or county receiving distributions from a local excise tax, monthly reports identifying each retailer doing business in

such city or county or making taxable sales sourced to such city or county, setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month, and identifying each business location maintained by the retailer and such retailer's sales or use tax registration or account number;

(7) provide information from returns and applications for registration filed pursuant to K.S.A. 12-187, and amendments thereto, and K.S.A. 79-3601, and amendments thereto, to a city or county treasurer or clerk or finance officer to explain the basis of statistics contained in reports provided by subsection (b)(6);

(8) disclose the following oil and gas production statistics received by the department of revenue in accordance with K.S.A. 79-4216 et seq., and amendments thereto: Volumes of production by well name, well number, operator's name and identification number assigned by the state corporation commission, lease name, leasehold property description, county of production or zone of production, name of purchaser and purchaser's tax identification number assigned by the department of revenue, name of transporter, field code number or lease code, tax period, exempt production volumes by well name or lease, or any combination of this information;

(9) release or publish liquor brand registration information provided by suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: Item number, universal numeric code, type status, product description, alcohol percentage, selling units, unit size, unit of measurement, supplier number, supplier name, distributor number and distributor name;

(10) release or publish liquor license information provided by liquor licensees, distributors, suppliers, farm wineries and microbreweries in accordance with the liquor control act. The information to be released is limited to: County name, owner, business name, address, license type, license number, license expiration date and the process agent contact information;

(11) release or publish cigarette and tobacco license information obtained from cigarette and tobacco licensees in accordance with the Kansas cigarette and tobacco products act. The information to be released is limited to: County name, owner, business name, address, license type and license number;

(12) provide environmental surcharge or solvent fee, or both,

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information from returns and applications for registration filed pursuant to K.S.A. 65-34,150 and 65-34,151, and amendments thereto, to the secretary of health and environment or the secretary's designee for the sole purpose of ensuring that retailers collect the environmental surcharge tax or solvent fee, or both;

(13) provide water protection fee information from returns and applications for registration filed pursuant to K.S.A. 82a-954, and amendments thereto, to the secretary of the state board of agriculture or the secretary's designee and the secretary of the Kansas water office or the secretary's designee for the sole purpose of verifying revenues deposited to the state water plan fund;

(14) provide to the secretary of commerce copies of applications for project exemption certificates sought by any taxpayer under the enterprise zone sales tax exemption pursuant to subsection (cc) of K.S.A. 79-3606, and amendments thereto;

(15) disclose information received pursuant to the Kansas cigarette and tobacco act and subject to the confidentiality provisions of this act to any criminal justice agency, as defined in subsection (c) of K.S.A. 22-4701, and amendments thereto, or to any law enforcement officer, as defined in subsection (c)(10) of K.S.A. 21-3110, and amendments thereto, on behalf of a criminal justice agency, when requested in writing in conjunction with a pending investigation; and

(16) provide to retailers tax exemption information for the sole purpose of verifying the authenticity of tax exemption numbers issued by the department. ; and

(17) provide information concerning remittance by sellers, as defined in section 2, and amendments thereto, of prepaid wireless 911 fees from returns to the local collection point administrator, as defined in section 2, and amendments thereto, for purposes of verifying seller compliance with collection and remittance of such fees.

(c) Any person receiving any information under the provisions of subsection (b) shall be subject to the confidentiality provisions of subsection (a) and to the penalty provisions of subsection (d).

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office. Reports of violations of this paragraph shall be investigated by the attorney general. The district attorney or county attorney and the attorney general shall have authority to prosecute any violation of this section if

the offender is a city or county clerk or treasurer or finance officer of a city or county.

New Sec. 25. The provisions of this act are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act.

Sec. 26. K.S.A. 12-5309 and K.S.A. 2010 Supp. 12-5327, 12-5338, 12-5361, 45-221 and 75-5133 are hereby repealed.

Sec. 27. From and after January 1, 2012, K.S.A. 12-5303, 12-5305, 12-5306, 12-5307, 12-5308 and K.S.A. 2010 Supp. 12-5301, 12-5302, 12-5304, 12-5310, 12-5321, 12-5322, 12-5323, 12-5324, 12-5325, 12-5326, 12-5327, 12-5328, 12-5329, 12-5330, 12-5331, 12-5332, 12-5333, 12-5334, 12-5335, 12-5336, 12-5337, 12-5351, 12-5352, 12-5353, 12-5354, 12-5355, 12-5356, 12-5357, 12-5358, 12-5359 and 12-5360 are hereby repealed.

Sec. 28. This act shall take effect and be in force from and after its publication in the Kansas register.

Clean-Up. If these proposed amendments are adopted, sections and internal references will need to be corrected.

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