

House Bill 2454

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides for point-of-sale collection of tax for access to 9-1-1 emergency reporting system from prepaid wireless telecommunications service consumers.

Applies tax to retail transactions made on or after January 1, 2014, and before January 1, 2016. Requires Office of Emergency Management and Department of Revenue to report biennially to interim committee of Legislative Assembly with authority over revenue issues on status of available forms of telecommunications service and related emergency communications taxation issues.

Extends period of applicability of emergency communications tax.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax for emergency communications; creating new provisions; amending ORS 305.380,
3 403.105, 403.200, 403.205, 403.235 and 403.240 and section 4, chapter 5, Oregon Laws 2002 (first
4 special session); prescribing an effective date; and providing for revenue raising that requires
5 approval by a three-fifths majority.

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1.** ORS 403.105 is amended to read:

8 403.105. As used in ORS 305.823 and 403.105 to 403.250, unless the context requires otherwise:

9 (1) "Account" means the Emergency Communications Account.

10 (2) "Central office" means a utility that houses the switching and trunking equipment serving
11 telephones in a defined area.

12 (3) "**Consumer**" means a person who purchases prepaid wireless telecommunications
13 service in a retail transaction.

14 [(3)] (4) "Department" means the Department of Revenue.

15 [(4)] (5) "Emergency call" means a telephone request that results from a situation in which
16 prompt service is essential to preserve human life or property.

17 [(5)] (6) "Enhanced 9-1-1 telephone service" means 9-1-1 telephone service consisting of a net-
18 work, database and on-premises equipment that provides automatic display of the incoming tele-
19 phone number and address in the designated public safety answering point at the time of receiving
20 an incoming 9-1-1 call.

21 [(6)] (7) "Exchange access services" means:

22 (a) Telephone exchange access lines or channels that provide local access by a subscriber in this
23 state to the local telecommunications network to effect the transfer of information; and

24 (b) Unless a separate tariff rate is charged therefor, any facility or service provided in con-
25 nection with the services described in paragraph (a) of this subsection.

26 [(7)] (8) "Governing body" means the board of county commissioners of a county, city council
27 of a city, other governing body of a city or county, board of directors of a special district or a 9-1-1

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 jurisdiction.

2 [(8)] (9) “Local government” has the meaning given that term in ORS 190.710.

3 (10) **“Prepaid wireless telecommunications service” means wireless telecommunications**
 4 **service that must be paid for in advance and that is sold in predetermined units or dollars,**
 5 **the number of which declines with use in a specified amount.**

6 [(9)] (11) “Provider” means a utility or other vendor or supplier of telecommunications service
 7 or equipment that provides telecommunications with access to the 9-1-1 emergency reporting system
 8 through local exchange service, cellular service or other wired or wireless means. **“Provider” does**
 9 **not include a seller.**

10 [(10)] (12) “Public or private safety agency” means any unit of state or local government, a
 11 special-purpose district or a private firm that provides or has authority to provide fire-fighting, po-
 12 lice, ambulance or emergency medical services.

13 [(11)] (13) “Public safety answering point” means a 24-hour communications facility established
 14 as an answering location for 9-1-1 calls originating within a given service area. A “primary public
 15 safety answering point” receives all calls directly from the public. A “secondary public safety an-
 16 swering point” only receives calls from a primary public safety answering point on a transfer or
 17 relay basis.

18 (14) **“Retail transaction” means the purchase of prepaid wireless telecommunications**
 19 **service from a seller for any purpose other than resale.**

20 (15) **“Seller” means a person who sells prepaid wireless telecommunications service to**
 21 **another person.**

22 [(12)] (16) “Subscriber” means a person who has telecommunication access to the 9-1-1 emer-
 23 gency reporting system through local exchange service, cellular service or other wired or wireless
 24 means. **“Subscriber” does not include a consumer who uses prepaid wireless telecommuni-**
 25 **cations service.**

26 [(13)] (17) “TTY” means a telephone-typewriter used by an individual with a hearing or speech
 27 impairment to communicate with another device or individual.

28 [(14)] (18) “Utility” means a utility, as defined in ORS 759.005, a telecommunications carrier, as
 29 defined in ORS 133.721, a municipality or any provider of exchange access services.

30 [(15)] (19) “Vendor” means a person providing telephone customer premises equipment or
 31 equipment specific to the operation of enhanced 9-1-1 telephone service.

32 (20) **“Wireless telecommunications service” means commercial mobile radio service as**
 33 **defined in 47 C.F.R. 20.3.**

34 [(16)] (21) “9-1-1 emergency reporting system” means a telephone service that provides the users
 35 of a public telephone system the ability to reach a primary public safety answering point by calling
 36 9-1-1.

37 [(17)] (22) “9-1-1 jurisdiction” means:

38 (a) An entity created under ORS chapter 190;

39 (b) A county service district established under ORS chapter 451 to provide an emergency com-
 40 munications system;

41 (c) An emergency communications district created under ORS 403.300 to 403.380; or

42 (d) A group of public or private safety agencies who have agreed in writing to jointly plan the
 43 installation, maintenance, operation or improvement of a 9-1-1 emergency reporting system.

44 [(18)] (23) “9-1-1 service area” means the geographical area that contains the entire central of-
 45 fice serving area from which the primary public safety answering point will have the capability to

1 answer calls placed to 9-1-1.

2 **SECTION 2.** Sections 3 to 9 of this 2013 Act are added to and made a part of ORS 403.105
3 to 403.250.

4 **SECTION 3.** (1) There is imposed on each consumer who has prepaid wireless telecom-
5 munications service with access to the 9-1-1 emergency reporting system a tax in the amount
6 of 50 cents for each retail transaction occurring in this state.

7 (2) The tax imposed under this section shall be collected by the seller from the consumer
8 with respect to each retail transaction occurring in this state. The amount of the tax shall
9 be separately stated on an invoice, receipt or other similar document that is provided to the
10 consumer by the seller, or shall be otherwise disclosed to the consumer.

11 (3) For purposes of this section, a retail transaction that is made in person by a con-
12 sumer at a business location of the seller shall be treated as occurring in this state if that
13 business location is in this state and any other retail transaction shall be treated as occur-
14 ring in this state if the residential street address or the primary business street address of
15 the consumer is in this state.

16 (4) The tax imposed under this section is the liability of the consumer and not of the
17 seller or of any seller, except that the seller shall be liable to remit, as provided in section
18 5 of this 2013 Act, all tax imposed under this section that the seller collects from consumers,
19 including all charges that the seller is determined to have collected where the amount of the
20 charge has not been separately stated on an invoice, receipt or other similar document that
21 is provided to the consumer by the seller, or otherwise disclosed to the consumer.

22 **SECTION 4.** Every seller responsible for the collection of the tax imposed by sections 3
23 to 8 of this 2013 Act shall keep records, render statements, make returns and comply with
24 rules adopted by the Department of Revenue with respect to the tax. Whenever in the
25 judgment of the department it is necessary, the department may require the seller, by notice
26 served upon the seller by first-class mail, to make returns, render statements or keep re-
27 cords sufficient to show whether there is tax liability under sections 3 to 8 of this 2013 Act.

28 **SECTION 5.** (1) The seller is responsible for collecting the tax under sections 3 to 8 of
29 this 2013 Act and shall file a return with the Department of Revenue on or before the last
30 day of the month following the end of each calendar quarter reporting the amount of tax due
31 for access to the 9-1-1 emergency reporting system during the quarter. The department shall
32 prescribe the form of the return required by this section. The rules adopted by the depart-
33 ment must require that returns be made subject to the penalties for false swearing.

34 (2) For the purpose of compensating sellers for expenses incurred in collecting the tax
35 imposed under sections 3 to 8 of this 2013 Act, each seller is permitted to deduct and retain
36 three percent of the amount of taxes that are collected by the seller from all retail trans-
37 actions conducted by the seller in this state.

38 (3) When a return is required to be filed under this section, the seller required to file the
39 return shall remit the tax due to the department, less the deduction allowed under sub-
40 section (2) of this section, at the time fixed for filing the return.

41 **SECTION 6.** (1) If the amount paid by the seller to the Department of Revenue under
42 section 5 of this 2013 Act exceeds the amount of tax payable, the department shall refund the
43 amount of the excess with interest thereon at the rate established under ORS 305.220 for
44 each month or fraction of a month from the date of payment of the excess until the date of
45 the refund. The department may not make a refund to a seller who fails to claim the refund

1 within two years after the due date for filing of the return with respect to which the claim
2 for refund relates.

3 (2) A consumer's exclusive remedy in a dispute involving tax liability is to file a claim
4 with the department.

5 **SECTION 7.** (1) Every seller required to collect the tax imposed by sections 3 to 8 of this
6 2013 Act is deemed to hold the same in trust for the State of Oregon and is responsible for
7 the payment of the tax to the Department of Revenue in the manner and at the time pro-
8 vided by section 5 of this 2013 Act.

9 (2) If the seller required to collect the tax fails to remit any amount deemed to be held
10 in trust for the State of Oregon, or if the consumer fails to pay the tax, the department may
11 enforce collection by the issuance of a distraint warrant for the collection of the delinquent
12 amount and all penalties, interest and collection charges accrued on the amount. The war-
13 rant is issued and proceeded upon in the same manner and has the same force and effect as
14 is prescribed with respect to warrants for the collection of delinquent income taxes.

15 **SECTION 8.** (1) Unless the context requires otherwise, the provisions of ORS chapters
16 305, 314 and 316 as to the audit and examination of reports and returns, determination of
17 deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments,
18 warrants, conferences and appeals to the Oregon Tax Court, and procedures relating thereto,
19 apply to sections 3 to 8 of this 2013 Act the same as if the tax were a tax imposed upon or
20 measured by net income. The provisions apply to the consumer liable for the tax and to the
21 seller required to collect and remit the tax. As to any amount collected and required to be
22 remitted to the Department of Revenue, the tax is considered a tax upon the seller required
23 to collect the tax and that seller is considered a taxpayer.

24 (2) Notwithstanding ORS 314.835 and 314.840, the department may disclose information
25 received under sections 3 to 8 of this 2013 Act to the Public Utility Commission to carry out
26 the provisions of chapter 290, Oregon Laws 1987.

27 (3) The commission may disclose information obtained pursuant to chapter 290, Oregon
28 Laws 1987, to the department to administer the tax imposed under sections 3 to 8 of this 2013
29 Act.

30 **SECTION 9.** On or before October 1 of each even-numbered year, the Office of Emer-
31 gency Management and the Department of Revenue shall jointly submit a report, and may
32 make recommendations for legislation, to an interim committee of the Legislative Assembly
33 with authority over revenue issues, on the current status of available forms of telecommu-
34 nications service, and may include recommendations for ensuring equitable taxation of all
35 users of telecommunications service having access to 9-1-1 emergency reporting systems.

36 **SECTION 10.** ORS 403.200 is amended to read:

37 403.200. (1) There is imposed on each paying retail subscriber who has [*telecommunication ser-*
38 *vices*] **telecommunications service** with access to the 9-1-1 emergency reporting system a tax equal
39 to 75 cents per month. The tax must be applied on a telecommunications circuit designated for a
40 particular subscriber. One subscriber line must be counted for each circuit that is capable of gen-
41 erating usage on the line side of the switched network regardless of the quantity or ownership of
42 customer premises equipment connected to each circuit. For providers of central office based ser-
43 vices, the tax must be applied to each line that has unrestricted connection to the switched network.
44 Those central office based service lines that have restricted connection to the switched network
45 must be charged based on software design in the central office that restricts the number of station

1 calls to and from the network. For cellular, wireless or other radio common carriers, the tax applies
 2 on a per instrument basis and only if the subscriber's place of primary use, as defined and deter-
 3 mined under 4 U.S.C. [116 to 126] **124**, is within this state.

4 (2) The subscriber is liable for the tax imposed by this section.

5 (3) The amounts of tax collected by the provider are considered as payment by the subscriber
 6 for that amount of tax.

7 (4) Any return made by the provider collecting the tax must be accepted by the Department of
 8 Revenue as evidence of payments by the subscriber of amounts of tax so indicated upon the return.

9 **SECTION 11.** ORS 403.205 is amended to read:

10 403.205. The [*tax*] **taxes** imposed by ORS 403.200 **and section 3 of this 2013 Act** [*does*] **do** not
 11 apply to:

12 (1) Services that the state is prohibited from taxing under the Constitution or laws of the United
 13 States or the Constitution or laws of the State of Oregon.

14 (2) Interconnection between telecommunications utilities and competitive access providers cer-
 15 tified pursuant to ORS 759.020, radio common carriers and interexchange carriers.

16 **SECTION 12.** ORS 403.235 is amended to read:

17 403.235. (1) The Emergency Communications Account is established separate and distinct from
 18 the General Fund in the State Treasury. All moneys received by the Department of Revenue pursu-
 19 ant to ORS 403.200 to 403.230 **and sections 3 to 8 of this 2013 Act**, and interest thereon, must be
 20 paid to the State Treasurer to be held in a suspense account established under ORS 293.445. After
 21 payment of refunds, the balance of the moneys received must be paid into the State Treasury and
 22 credited to the Emergency Communications Account. All moneys in the account are continuously
 23 appropriated to the Office of Emergency Management and must be used for the purposes described
 24 in ORS 403.240.

25 (2) The Enhanced 9-1-1 Subaccount is established as a subaccount of the Emergency Communi-
 26 cations Account. Thirty-five percent of the amount in the Emergency Communications Account on
 27 the date of distribution must be credited to the Enhanced 9-1-1 Subaccount. All moneys in the ac-
 28 count are continuously appropriated to the Office of Emergency Management and must be used for
 29 the purposes described in ORS 403.240 (3), (4) and (5).

30 **SECTION 13.** ORS 403.240, as amended by section 1, chapter 60, Oregon Laws 2012, is amended
 31 to read:

32 403.240. (1) The Office of Emergency Management shall distribute quarterly the entire amount
 33 of the moneys in the Emergency Communications Account. The office shall pay the following
 34 amounts from the account:

35 (a) Administrative costs incurred during the preceding calendar quarter by the Department of
 36 Revenue in carrying out ORS 403.200 to 403.230 in an amount that does not exceed one-half of one
 37 percent of the amount in the account on the date of distribution, or actual expenses incurred by the
 38 department, whichever is less.

39 (b) Administrative costs to be incurred during the calendar quarter by the Office of Emergency
 40 Management in carrying out its duties under ORS 305.823 and 403.105 to 403.250. The amount to be
 41 paid under this paragraph may not exceed four percent of the amount in the account on the date
 42 of distribution, and, on or before the next date of distribution, the office shall repay to the account
 43 any amount received under this paragraph that exceeds the actual expenses incurred by the office
 44 in the quarter.

45 (c) **Administrative costs incurred during the preceding calendar quarter by the Depart-**

1 **ment of Revenue in carrying out sections 3 to 8 of this 2013 Act in an amount that does not**
 2 **exceed two percent of the amount that is collected under sections 3 to 8 of this 2013 Act**
 3 **during the immediately preceding quarter.**

4 (2) The office may:

5 (a) Provide funding for the Oregon Emergency Response System in an amount that does not
 6 exceed 15 percent of the legislatively approved budget for the Oregon Emergency Response System
 7 subject to availability of funds within the limit for administrative costs in subsection (1)(b) of this
 8 section.

9 (b) Prescribe the manner in which funding is provided to the Oregon Emergency Response Sys-
 10 tem under this subsection.

11 (3) The office shall use funds in the Enhanced 9-1-1 Subaccount to pay for costs incurred during
 12 the preceding calendar quarter for enhanced 9-1-1 telephone service established pursuant to ORS
 13 403.115. The office may not disburse funds in the Enhanced 9-1-1 Subaccount to a 9-1-1 jurisdiction
 14 that does not have an approved final plan as required in section 7, chapter 743, Oregon Laws 1991.
 15 The office shall make payments for reimbursement only after a reimbursement request has been
 16 submitted to the office in the manner prescribed by the office. Reimbursement requests for recurring
 17 and nonrecurring charges necessary to enable the 9-1-1 jurisdiction to comply with ORS 403.115
 18 must be submitted directly to the office. The costs reimbursable under this subsection are only those
 19 incurred for:

20 (a) Modification of central office switching and trunking equipment;

21 (b) Network development, operation and maintenance;

22 (c) Database development, operation and maintenance;

23 (d) On-premises equipment procurement, maintenance and replacement;

24 (e) Conversion of pay station telephones required by ORS 403.140;

25 (f) Collection of the [tax] **taxes** imposed by ORS 403.200 to 403.230 **and sections 3 to 8 of this**
 26 **2013 Act;** and

27 (g) Addressing if the reimbursement request is consistent with rules adopted by the office.

28 (4) Subject to availability of funds, the office shall provide funding to 9-1-1 jurisdictions that
 29 have enhanced 9-1-1 telephone service operational prior to December 31, 1991, based on cost infor-
 30 mation provided in their final plan required in section 7, chapter 743, Oregon Laws 1991. The office
 31 shall approve final plans submitted that meet the minimum requirements set forth in ORS 403.115
 32 (2) and (4). The office shall limit funding for costs incurred prior to the preceding calendar quarter
 33 to charges associated with database development, network and on-premises equipment that satisfies
 34 the requirements of ORS 403.115 (2) and (4). The office shall prescribe the manner in which funding
 35 is provided under this subsection.

36 (5) 9-1-1 jurisdictions may use funds distributed to the jurisdiction from any account described
 37 in ORS 403.235 to repay loans from the Special Public Works Fund if the loans were used for pur-
 38 poses that are allowable under ORS 403.105 to 403.250.

39 (6) The office shall retain amounts remaining in the Enhanced 9-1-1 Subaccount and may dis-
 40 tribute the amounts in a subsequent quarter for those purposes set forth in subsections (3), (4) and
 41 (5) of this section.

42 (7) The office shall review reimbursement requests for modification of central office switching
 43 and trunking equipment, conversion of pay station telephones, and network development, operation
 44 and maintenance costs necessary to comply with ORS 403.115 for the appropriateness of the costs
 45 claimed. The office shall approve or disapprove the reimbursement requests.

1 (8) The office shall review reimbursement requests for database development, operation and
 2 maintenance, and on-premises equipment procurement, maintenance and replacement costs necessary
 3 to comply with ORS 403.115 for the appropriateness of the costs claimed.

4 (9) After all amounts under subsections (1) and (2) of this section and ORS 403.235 (2) have been
 5 paid, the office shall allocate the balance of the Emergency Communications Account to cities on
 6 a per capita basis and to counties on a per capita basis of each county's unincorporated area for
 7 distribution directly to 9-1-1 jurisdictions as directed by the city or county. However, each county
 8 must be credited a minimum of one percent of the balance of the account after the amounts under
 9 subsections (1) and (2) of this section and ORS 403.235 (2) have been paid.

10 (10) 9-1-1 jurisdictions shall submit an accounting report to the office annually. The report must
 11 be provided in the manner prescribed by the office and must include but not be limited to:

12 (a) Funds received and expended under subsection (9) of this section for the purposes of fulfilling
 13 the requirements of ORS 403.115;

14 (b) Local funds received and expended for the purposes of fulfilling the requirements of ORS
 15 403.115; and

16 (c) Local funds received and expended for the purposes of providing emergency communications
 17 services.

18 **SECTION 14.** ORS 305.380 is amended to read:

19 305.380. As used in ORS 305.385:

20 (1) "Agency" means any department, board, commission, division or authority of the State of
 21 Oregon, or any political subdivision of this state which imposes a local tax administered by the
 22 Department of Revenue under ORS 305.620.

23 (2) "License" means any written authority required by law or ordinance as a prerequisite to the
 24 conduct of a business, trade or profession.

25 (3) "Provider" means any person who contracts to supply goods, services or real estate space
 26 to an agency.

27 (4) "Tax" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 **and**
 28 **sections 3 to 8 of this 2013 Act** and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the el-
 29 derly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the
 30 Department of Revenue under ORS 305.620.

31 **SECTION 15.** Section 4, chapter 5, Oregon Laws 2002 (first special session), as amended by
 32 section 1, chapter 4, Oregon Laws 2002 (third special session), and section 1, chapter 629, Oregon
 33 Laws 2007, is amended to read:

34 **Sec. 4.** (1) Taxes imposed under ORS [401.792] **403.200** apply to subscriber bills issued on or af-
 35 ter January 1, 2002, and before January 1, [2014] **2016**.

36 (2) Taxes imposed under ORS [401.792] **403.200** on or after January 1, 2002, and before May 13,
 37 2002, are due and payable by the subscriber to the provider on or before 20 days after the first day
 38 of the month following May 13, 2002. Taxes that are not paid by the subscriber to the provider
 39 within the time required shall bear interest at the rate established under ORS 305.220 for each
 40 month, or fraction of a month, from the date that is 20 days after the first day of the month fol-
 41 lowing May 13, 2002, until paid.

42 (3) Unless previously remitted, taxes that are paid to the provider under subsection (2) of this
 43 section shall be remitted by the provider to the Department of Revenue at the time and in the same
 44 manner as taxes imposed under ORS [401.792] **403.200** for the first month following May 13, 2002,
 45 are remitted to the department.

1 **SECTION 16.** (1) Sections 3 to 8 of this 2013 Act and the amendments to ORS 403.105,
2 403.205, 403.235 and 403.240 by sections 1 and 11 to 13 of this 2013 Act apply to retail trans-
3 actions made on or after January 1, 2014.

4 (2) The tax imposed by sections 3 to 8 of this 2013 Act applies to retail transactions made
5 on or after January 1, 2014, and before January 1, 2016.

6 **SECTION 17.** This 2013 Act takes effect on the 91st day after the date on which the 2013
7 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

8
