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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Hillyer

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### SUMMARY

#### Wireless Emergency Radio Technology charges

- Imposes a Wireless Emergency Radio Technology (WERT) subscriber charge on wireless subscribers and a WERT retail charge on prepaid wireless calling services in the state for deposit into the MARCS Administration Fund and the 9-1-1 Government Assistance Fund.
- Imposes a WERT subscriber charge of 15¢ per month on each wireless telephone number of a wireless subscriber who has a billing address in the state.
- Imposes a WERT retail charge of 15¢ on each retail sale of a prepaid wireless calling service occurring in the state, with specifications for the disclosure and application of the charge.
- Applies existing law reporting and remittance provisions for the wireless 9-1-1 charge to the WERT charges, including the return and remittance of the charge, retention of a collection fee, and the imposition of liability for the charge on consumers or subscribers and sellers of prepaid wireless calling service or wireless service providers or resellers.
- Applies existing law provisions on actions that the Tax Commissioner may take regarding unpaid wireless 9-1-1 charges to the WERT charges, including circumstances under which an audit may be performed, assessing a charge upon audit completion, charging interest on unpaid assessments, and filing unpaid assessments with the court.
- Exempts the WERT subscriber and retail charges from state or local taxation.
- Requires each WERT subscriber and retail charge that is imposed and remitted to be paid to the Treasurer of State for deposit, with 10¢ of each fee going to the MARCS Administration Fund and 5¢ of each fee going to the Wireless 9-1-1 Government Assistance Fund.

- Specifies that the Director of Administrative Services must use the funds from the MARCS Administration Fund for the operations and infrastructure maintenance of Multi-Agency Radio Communication System (MARCS) and other advanced public safety communication technology.

## **Required use of MARCS**

- Requires certain state and local entities to use MARCS as their digital radio communications system within five years of the effective date of the bill.
- Authorizes a person operating an advanced communication technology to attach the necessary equipment to a MARCS tower.

## **Increased communications and broadband access**

- Requires the Department of Administrative Services to work with the other state agencies to identify state resources and funding that may be used to increase communications and broadband access throughout Ohio.

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# **DETAILED ANALYSIS**

## **Wireless Emergency Radio Technology charges**

### **Overview**

The bill imposes a Wireless Emergency Radio Technology (WERT) subscriber charge on wireless subscribers and a WERT Retail charge on prepaid wireless calling services in the state. These charges are deposited into the MARCS Deposit Fund and the Wireless 9-1-1 Government Assistance Fund.

MARCS stands for the Multi-Agency Radio Communication System. It is a radio and data network that provides statewide wireless communication for public safety and first responders.<sup>1</sup>

### **Wireless Emergency Radio Technology subscriber charge**

The bill imposes a WERT subscriber charge of 15¢ per month on each wireless telephone number of a wireless subscriber who has a billing address in the state. Each wireless service provider and reseller must collect the charge as a specific line item on each subscriber's monthly bill. The line item must be expressly designated as "State/Local Wireless Emergency Radio Technology Costs (15¢/billed number)."<sup>2</sup>

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<sup>1</sup> "MARCS Facts," Ohio Department of Administrative Services, <https://das.ohio.gov/Divisions/Information-Technology/MARCS-Services> (last visited Sept. 22, 2021).

<sup>2</sup> R.C. 128.541.

## Wireless Emergency Radio Technology retail charge

The bill imposes, on each retail sale of a prepaid wireless calling service occurring in the state, a WERT retail charge of 15¢.<sup>3</sup> A retail sale occurs in the state if: (1) it is effected by the consumer appearing in person at a seller's business location in Ohio, or (2) if the sale is sourced to Ohio. The following are guidelines for determining how sales are sourced:

- When the consumer receives a service at a vendor's place of business, the sale is sourced to that place of business;
- When the service is not received at the business, sale is sourced to the location known to the vendor where the consumer receives the service, including the location indicated by instructions for delivery to the consumer;
- If the first two bullets do not apply, the sale must be sourced to the location indicated by an address for the consumer that is available from the vendor's business records that are maintained in the ordinary course of the vendor's business, when use of that address does not constitute bad faith;
- If the first three bullets do not apply, the sale must be sourced to the location indicated by an address for the consumer obtained during the consummation of the sale, including the address associated with the consumer's payment instrument, if no other address is available, when use of that address does not constitute bad faith;
- If the first four bullets do not apply, the seller or provider may elect to source the sale to the location associated with the mobile telephone number.<sup>4</sup>

The bill requires the seller of the prepaid wireless calling service to collect the charge from the consumer at the time of each retail sale and disclose the amount of the charge to the consumer at the time of the sale by itemizing the charge on the receipt, invoice, or similar form of written documentation provided to the consumer.<sup>5</sup>

When a prepaid wireless calling service is sold with one or more other products or services for a single, nonitemized price, the WERT retail charge applies to the entire nonitemized price. The following are exceptions to this:

- If the amount of the prepaid wireless calling service is disclosed to the consumer as a dollar amount, the seller may elect to apply the charge only to that dollar amount.
- If the seller can identify the portion of the nonitemized price that is attributable to the prepaid wireless calling service, by reasonable and verifiable standards from the seller's books and records that are kept in the regular course of business for other purposes, including nontax purposes, the seller may elect to apply the charge only to that portion.

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<sup>3</sup> R.C. 128.543(A).

<sup>4</sup> R.C. 128.543(B); R.C. 5739.034(E)(3) and 5739.033(C)(1) to (5), not in the bill.

<sup>5</sup> R.C. 128.541(C)(1).

- If a minimal amount of a prepaid wireless calling service is sold with a prepaid wireless calling device for the single, nonitemized price, the seller may elect not to collect the charge. The bill defines “minimal” as either ten minutes or less or \$5 or less.<sup>6</sup>

### **Reporting and remittance requirements**

The bill applies existing law reporting and remittance requirements for wireless 9-1-1 charges to WERT charges.<sup>7</sup> Under the bill, each seller of a prepaid wireless calling service, wireless service provider, and reseller, on or before the 23<sup>rd</sup> day of each month, must (1) make and file a return for the previous month showing the amount of the WERT subscriber and retail charges due on a form prescribed by the Tax Commissioner, and (2) remit the full amount due, as shown on the return.<sup>8</sup>

If a seller is required to collect prepaid WERT retail charges in amounts that do not merit monthly returns, the Tax Commissioner may authorize the seller to make and file returns less frequently. Existing law, unchanged by the bill, requires the Tax Commissioner to ascertain whether this is warranted on the basis of administrative costs to the state.<sup>9</sup>

A wireless service provider, reseller, and seller may retain as a collection fee 3% of the total WERT charges and the existing law wireless 9-1-1 charges imposed. The provider, reseller, or seller must account to the Tax Commissioner for the amount retained.<sup>10</sup>

The bill provides that each subscriber or consumer subject to a WERT charge is liable to the state for the charge. If a wireless service provider or reseller fails to bill or collect the charges, or if a seller fails to collect the charges, the provider, reseller, or seller is liable to the state for the amount not billed or collected. If a provider, reseller, or seller fails to remit money to the Tax Commissioner, the provider, reseller, or seller is liable to the state for the amount not remitted, regardless of whether the amount was collected.<sup>11</sup> However, a provider of prepaid wireless calling service is not liable to the state for any WERT retail charge that is not collected or remitted.<sup>12</sup>

### **Unpaid charges**

The bill applies existing law provisions on actions that the Tax Commissioner may take regarding unpaid wireless 9-1-1 charges to the WERT subscriber and retail charges. A summary of these provisions are below:

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<sup>6</sup> R.C. 128.541(D)(1) to (3).

<sup>7</sup> R.C. 128.541(C)(2).

<sup>8</sup> R.C. 128.46(B)(1)(a) and (b).

<sup>9</sup> R.C. 128.46(B)(3).

<sup>10</sup> R.C. 128.46(B)(4).

<sup>11</sup> R.C. 128.46(C)(2)(a).

<sup>12</sup> R.C. 128.46(C)(2)(b).

- Allows the Tax Commissioner to audit a provider, reseller, or seller if the Tax Commissioner has reason to believe that a wireless service provider, reseller, or seller has either: (1) failed to bill, collect or remit, or (2) retained more than the amount authorized of the WERT charges, and has given written notice to the provider, reseller, or seller.<sup>13</sup>
- Allows the Tax Commissioner, after written notice and completion of the audit (described above), to make an assessment against the provider, reseller, or seller, if the Tax Commissioner determines that the provider, reseller, or seller did not bill, collect, or remit the WERT charges, or has retained more than the amount authorized, in an amount equal to that amount retained or not remitted.<sup>14</sup>
- Provides that the portion of any assessment due and not paid within 60 days after an assessment was made must bear interest from that date until paid at the rate per annum as prescribed under existing law.<sup>15</sup>
- Provides that an assessment becomes final and payable unless the provider, reseller, or seller files a petition for reassessment within 60 days after service of the notice of assessment.<sup>16</sup>
- Provides that after an assessment becomes final, if any portion (including interest) remains unpaid, a certified copy of the final assessment may be filed in the office of the clerk of the court of common pleas in the county where business of the assessed party is conducted (or in Franklin County, if the party assessed maintains no place of business in the state). Upon filing, the clerk must enter a judgment for the state against the assessed party in the amount shown on the final assessment, and must file the judgment in a loose-leaf book entitled, “Special Judgments for Wireless 9-1-1 and Wireless Emergency Radio Technology Charges.”<sup>17</sup>
- Allows the Tax Commissioner to make an assessment to recover an erroneously refunded charge, if the Tax Commissioner determines that the Tax Commissioner has erroneously refunded a WERT charge.<sup>18</sup>
- Provides that an assessment does not discharge a subscriber or consumer’s liability to reimburse the provider, reseller, or seller for a WERT charge and that if, after the date of

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<sup>13</sup> R.C. 128.46(E)(1).

<sup>14</sup> R.C. 128.46(E)(2).

<sup>15</sup> R.C. 128.46(E)(3).

<sup>16</sup> R.C. 128.46(E)(4).

<sup>17</sup> R.C. 128.46(E)(5).

<sup>18</sup> R.C. 128.46(E)(6).

service of the audit notice, a subscriber or consumer pays a WERT charge for the period covered by the assessment, the payment must be credited to the assessment.<sup>19</sup>

### **Tax exemption**

Both the WERT subscriber and WERT retail charges are exempt from state or local taxation.<sup>20</sup>

### **Deposit of WERT charges into MARCS Administration Fund**

Each WERT subscriber charge and WERT retail charge that is imposed and remitted under the bill must be paid to the Treasurer for deposit. For each fee that is assessed under both charges, 10¢ must be deposited into the MARCS Administration Fund and \$0.05 must be deposited into the Wireless 9-1-1 Government Assistance Fund.<sup>21</sup>

Under existing law, unchanged by the bill, the Department of Administrative Services must collect user fees from MARCS participants. The fees are deposited in the MARCS Administration Fund, which is created in the state treasury. The bill specifies that the Director of Administrative Services must use the funds for the operations and infrastructure maintenance of MARCS and other advanced public safety communication technology, including services and equipment related to the use of the Nationwide Public Safety Broadband Network under federal law.<sup>22</sup>

### **Required use of MARCS**

MARCS is a radio and data network that provides statewide, secure, reliable public service wireless communication for public safety and first responders. The system is used by the Ohio state agencies and many other local government and public and private organizations. The bill requires certain state and local entities to use MARCS as their digital radio communications system within five years of the effective date of the bill.<sup>23</sup> The following state and local entities are subject to the requirement:

1. Any state agency;
2. A county with a population of less than 500,000, as of the most recent federal decennial census;
3. Any law enforcement agency;
4. Any fire department; and

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<sup>19</sup> R.C. 128.46(E)(7).

<sup>20</sup> R.C. 128.545.

<sup>21</sup> R.C. 128.547 and 4501.29(B).

<sup>22</sup> R.C. 4501.29.

<sup>23</sup> R.C. 4501.304(A).

5. Any emergency medical services organization.<sup>24</sup>

### **Use of MARCS towers**

The bill authorizes a person operating an advanced communication technology to attach the equipment necessary for that technology's operation to any MARCS utility tower. If state or local approval is necessary before the equipment may be attached (i.e., an easement or other legal authorization), the state or local entity must provide that approval.<sup>25</sup>

### **Increased communications and broadband access**

The bill requires the Department of Administrative Services to work with the other state agencies to identify state resources and funding that may be used to increase communications and broadband access throughout Ohio. In order to identify those resources and funding, the agencies are required to research:

1. Methods for leveraging state assets, including cell towers, utility poles, rights-of-way, buildings, and real property; and
2. Impediments to leveraging assets, including any restrictions in advertising or use of the asset, constraints in renting property, and any other similar impediments.

The agencies are allowed to work with other public and private organizations in seeking and identifying assets to expand communications and broadband access. After researching the surrounding issues, the agencies must each develop a plan to better utilize state resources and funding for communications and broadband access and expansion throughout the state. There is no set deadline or timeline for the research or plans.<sup>26</sup>

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## **HISTORY**

Action	Date
Introduced	04-27-21

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H0278-I-134/ks

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<sup>24</sup> R.C. 4501.30.

<sup>25</sup> R.C. 4501.304(B).

<sup>26</sup> R.C. 4503.305.