

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 439

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO EMERGENCY SERVICES; CORRECTING SECTIONS OF THE TAX
ADMINISTRATION ACT; AMENDING SECTIONS OF THE ENHANCED 911 ACT;
CREATING AN ENHANCED 911 ADVISORY BOARD TO PROVIDE CONSULTATION
TO THE DEPARTMENT OF INFORMATION TECHNOLOGY IN THE
ADMINISTRATION OF THE STATE'S ENHANCED 911 SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

(1) Income Tax Act;

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- 1 (2) Withholding Tax Act;
- 2 (3) Venture Capital Investment Act;
- 3 (4) Gross Receipts and Compensating Tax Act
- 4 and any state gross receipts tax;
- 5 (5) Liquor Excise Tax Act;
- 6 (6) Local Liquor Excise Tax Act;
- 7 (7) any municipal local option gross receipts
- 8 tax;
- 9 (8) any county local option gross receipts
- 10 tax;
- 11 (9) Special Fuels Supplier Tax Act;
- 12 (10) Gasoline Tax Act;
- 13 (11) petroleum products loading fee, which fee
- 14 shall be considered a tax for the purpose of the Tax
- 15 Administration Act;
- 16 (12) Alternative Fuel Tax Act;
- 17 (13) Cigarette Tax Act;
- 18 (14) Estate Tax Act;
- 19 (15) Railroad Car Company Tax Act;
- 20 (16) Investment Credit Act, rural job tax
- 21 credit, Laboratory Partnership with Small Business Tax Credit
- 22 Act, Technology Jobs and Research and Development Tax Credit
- 23 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 24 Credit Act and high-wage jobs tax credit;
- 25 (17) Corporate Income and Franchise Tax Act;

1 (18) Uniform Division of Income for Tax
 2 Purposes Act;
 3 (19) Multistate Tax Compact;
 4 (20) Tobacco Products Tax Act; and
 5 (21) the telecommunications relay service
 6 surcharge imposed by Section 63-9F-11 NMSA 1978, which
 7 surcharge shall be considered a tax for the purposes of the Tax
 8 Administration Act;

9 B. the administration and enforcement of the
 10 following taxes, surtaxes, advanced payments or tax acts as
 11 they now exist or may hereafter be amended:

12 (1) Resources Excise Tax Act;
 13 (2) Severance Tax Act;
 14 (3) any severance surtax;
 15 (4) Oil and Gas Severance Tax Act;
 16 (5) Oil and Gas Conservation Tax Act;
 17 (6) Oil and Gas Emergency School Tax Act;
 18 (7) Oil and Gas Ad Valorem Production Tax Act;
 19 (8) Natural Gas Processors Tax Act;
 20 (9) Oil and Gas Production Equipment Ad
 21 Valorem Tax Act;
 22 (10) Copper Production Ad Valorem Tax Act;
 23 (11) any advance payment required to be made
 24 by any act specified in this subsection, which advance payment
 25 shall be considered a tax for the purposes of the Tax

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1 Administration Act;

2 (12) Enhanced Oil Recovery Act;

3 (13) Natural Gas and Crude Oil Production

4 Incentive Act; and

5 (14) intergovernmental production tax credit
6 and intergovernmental production equipment tax credit;

7 C. the administration and enforcement of the
8 following taxes, surcharges, fees or acts as they now exist or
9 may hereafter be amended:

10 (1) Weight Distance Tax Act;

11 (2) the workers' compensation fee authorized
12 by Section 52-5-19 NMSA 1978, which fee shall be considered a
13 tax for purposes of the Tax Administration Act;

14 (3) Uniform Unclaimed Property Act (1995);

15 (4) 911 emergency surcharge and the ~~[network~~
16 ~~and database]~~ prepaid wireless enhanced 911 surcharge, which
17 surcharges shall be considered taxes for purposes of the Tax
18 Administration Act;

19 (5) the solid waste assessment fee authorized
20 by the Solid Waste Act, which fee shall be considered a tax for
21 purposes of the Tax Administration Act;

22 (6) the water conservation fee imposed by
23 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
24 for the purposes of the Tax Administration Act; and

25 (7) the gaming tax imposed pursuant to the

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1 Gaming Control Act; and

2 D. the administration and enforcement of all other
3 laws, with respect to which the department is charged with
4 responsibilities pursuant to the Tax Administration Act, but
5 only to the extent that the other laws do not conflict with the
6 Tax Administration Act."

7 SECTION 2. Section 7-1-6.31 NMSA 1978 (being Laws 1990,
8 Chapter 86, Section 5, as amended) is amended to read:

9 "7-1-6.31. DISTRIBUTIONS--ENHANCED 911 FUND [~~NETWORK AND~~
10 ~~DATABASE SURCHARGE FUND~~].--

11 A. Pursuant to Section 7-1-6.1 NMSA 1978, a
12 distribution shall be made to the enhanced 911 fund in an
13 amount equal to the net receipts attributable to the 911
14 emergency surcharge.

15 B. A distribution pursuant to Section 7-1-6.1 NMSA
16 1978 shall be made to the [~~network and database surcharge~~]
17 enhanced 911 fund of the net receipts attributable to the
18 [~~network and database~~] prepaid wireless enhanced 911 surcharge
19 imposed pursuant to the Enhanced 911 Act."

20 SECTION 3. Section 63-9D-3 NMSA 1978 (being Laws 1989,
21 Chapter 25, Section 3, as amended) is amended to read:

22 "63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

23 A. "911 call" means any real-time communication,
24 message, signal or transmission between a person needing
25 assistance and a public safety answering point call-taker by

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1 dialing 9-1-1 or its equivalent;

2 B. "911 service area" means the area designated by
3 the fiscal agent, local governing body or the ~~[division]~~
4 department to receive enhanced 911 service;

5 C. "access line" means a telecommunications
6 company's line that has the capability to reach local public
7 safety agencies by dialing 911, but does not include a line
8 used for the provision of interexchange services or commercial
9 mobile radio service;

10 D. "advisory board" means the enhanced 911 advisory
11 board created pursuant to Section 9 of this 2019 act;

12 ~~[D.]~~ E. "commercial mobile radio service" means
13 service provided by a wireless real-time two-way voice
14 communication device, including:

15 (1) radio-telephone communications used in
16 cellular telephone service;

17 (2) the functional or competitive equivalent
18 of radio-telephone communications used in cellular telephone
19 service;

20 (3) a personal communications service; or

21 (4) a network radio access line;

22 ~~[E.]~~ F. "commercial mobile radio service provider"
23 means a person who provides commercial mobile radio services,
24 including a person who purchases commercial mobile radio
25 service from a provider and resells that service;

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1 ~~[F. "commission" means the public regulation~~
2 ~~commission;]~~

3 G. "communication service" means any service that:

4 (1) is capable of and required by law to
5 access, connect with or interface with the enhanced 911 system
6 by directly dialing, initializing or otherwise activating the
7 enhanced 911 system regardless of the transmission medium or
8 technology employed; and

9 (2) provides or enables real-time or
10 interactive communication;

11 H. "communications service provider" means any
12 entity that provides communication services;

13 I. "database" means information that is collected,
14 formatted and disseminated and that is necessary for the
15 functioning of the enhanced 911 system, including geographic
16 information system (GIS) addressing and digital mapping
17 information;

18 J. "department" means the ~~[taxation and revenue]~~
19 department of information technology;

20 ~~[K. "division" means the local government division~~
21 ~~of the department of finance and administration;~~

22 ~~L.]~~ K. "enhanced 911 surcharge" means the monthly
23 uniform charge assessed on each access line in the state, on
24 each active number for a commercial mobile radio service
25 subscriber and on the number of VoIP lines for which the VoIP

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1 service provider enables the capacity for simultaneous calls,
2 regardless of actual usage, to be connected to the public
3 switched telephone network during the period for which the
4 fixed charge is imposed for a VoIP service subscriber in New
5 Mexico and the charge assessed on any other consumer purchase
6 of communication service provided by a communications service
7 provider that enables communication between a person needing
8 assistance and a public safety answering point call-taker by
9 dialing 9-1-1 or its equivalent; provided that an enhanced 911
10 surcharge shall not be assessed on the provision of broadband
11 internet access service;

12 ~~[M.]~~ L. "enhanced 911 system" means, regardless of
13 the technology used, a landline, wireless, NG-911 or ESInet
14 system consisting of network switching equipment, database,
15 mapping and on-premises equipment, or the functional equivalent
16 thereof, that uses the single three-digit number 911 for
17 reporting police, fire, medical or other emergency situations,
18 thereby enabling a caller to reach a public safety answering
19 point to report emergencies by dialing 911, and includes the
20 capability to:

21 (1) selectively route incoming 911 calls to
22 the appropriate public safety answering point operating in a
23 911 service area;

24 (2) automatically display the name, address
25 and telephone number of an incoming 911 call on a video monitor

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1 at the appropriate public safety answering point;

2 (3) provide one or more access paths for
3 communications between users at different geographic locations
4 through a network system that may be designed for voice, text
5 or data, or any combination of these, and may feature limited
6 or open access and may employ appropriate analog, digital
7 switching or transmission technologies;

8 (4) relay to a designated public safety
9 answering point a 911 caller's number and base station or cell
10 site location and the latitude and longitude of the 911
11 caller's location in relation to the designated public safety
12 answering point; and

13 (5) manage or administer the functions listed
14 in Paragraphs (1) through (4) of this subsection;

15 [~~N.~~] M. "enhanced 911 equipment" means the public
16 safety answering point equipment directly related to the
17 operation of an enhanced 911 system, including automatic number
18 identification or automatic location identification controllers
19 and display units, printers, logging recorders and software
20 associated with call detail recording, call center work
21 stations, training, latitude and longitude base station or cell
22 site location data and GIS equipment necessary to obtain and
23 process locational map and emergency service zone data for
24 landline and wireless callers;

25 [~~0.~~] N. "equipment supplier" means a person who

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1 provides or offers to provide communications equipment
2 necessary for the establishment of enhanced 911 services;

3 [P-] O. "ESInet" means emergency services internet
4 protocol network, an internet-protocol-based, multipurpose
5 inter-network supporting local, regional, state and national
6 public safety communications services in addition to 911;

7 [Q-] P. "fiscal agent" means the local governing
8 body that administers grants from the fund for a given locality
9 or region by agreement;

10 [R-] Q. "fund" means the enhanced 911 fund;

11 [S-] R. "local governing body" means the board of
12 county commissioners of a county or the governing body of a
13 municipality as defined in the Municipal Code;

14 [T-] S. "NG-911" means a next generation 911 system
15 consisting of network, hardware, software, data and operational
16 policies and procedures that:

17 (1) provides standardized interfaces from call
18 and message services;

19 (2) processes all types of emergency calls,
20 including non-voice [~~multimedia~~] multimedia messages;

21 (3) acquires and integrates additional data
22 useful to call routing and handling;

23 (4) delivers the calls, messages and data to
24 appropriate public safety answering points and other
25 appropriate emergency entities;

1 (5) supports data and communications needs for
2 coordinated incident response and management; and

3 (6) provides a secure environment for
4 emergency communications;

5 ~~[U.]~~ T. "proprietary information" means customer
6 lists, customer counts, technology descriptions or trade
7 secrets, including the actual or development costs of
8 individual components of an enhanced 911 system; provided that
9 such information is designated as proprietary by the
10 communications service provider; and provided further that
11 "proprietary information" does not include individual payments
12 made by the ~~[division]~~ department or any list of names and
13 identifying information of subscribers who have not paid the
14 surcharge;

15 ~~[V.]~~ U. "public safety answering point" means a
16 twenty-four-hour local communications facility that receives
17 911 service communications and directly dispatches emergency
18 response services or that relays communications to the
19 appropriate public or private safety agency;

20 V. "secretary" means the secretary of information
21 technology;

22 W. "subscriber" means a person who purchases
23 communication services at retail from a communications service
24 provider that are capable of originating a 911 communication;

25 X. "surcharge" means the 911 emergency surcharge;

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1 Y. "surcharge collected" means the amount of
2 enhanced 911 surcharge billed or received or deemed to have
3 been received by the seller or provider, consistent with the
4 seller's or provider's method of accounting, including accrual
5 or cash;

6 Z. "telecommunications company" means a person who
7 provides wire telecommunications services that are capable of
8 originating a 911 communication;

9 AA. "vendor" means a person that provides 911
10 equipment, service or network support;

11 BB. "VoIP" means "interconnected voice-over-
12 internet protocol service" as defined in the Code of Federal
13 Regulations, Title 47, Part 9, Section 9.3, as amended; and

14 CC. "VoIP service provider" or "interconnected
15 voice-over-internet protocol service provider" means an entity
16 that provides interconnected voice-over-internet protocol
17 service to end users."

18 **SECTION 4.** Section 63-9D-5 NMSA 1978 (being Laws 1989,
19 Chapter 25, Section 5, as amended) is amended to read:

20 "63-9D-5. IMPOSITION OF SURCHARGE.--

21 A. There is imposed a 911 emergency surcharge in
22 the amount of fifty-one cents (\$.51) to be billed to each
23 subscriber access line by a communications service provider, on
24 each active number for a commercial mobile radio service
25 subscriber and on the number of VoIP lines for which the VoIP

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1 service provider enables the capacity for simultaneous calls,
2 regardless of actual usage, to be connected to the public
3 switched telephone network during the period for which the
4 fixed charge is imposed. The surcharge is imposed on all
5 subscribers whose place of primary use, as defined in the
6 federal Mobile Telecommunications Sourcing Act, is in New
7 Mexico; provided, however, that the surcharge shall not be
8 imposed upon subscribers receiving reduced rates pursuant to
9 the Low Income Telephone Service Assistance Act; and provided
10 further that the surcharge shall not apply to prepaid wireless
11 communication service; and provided further that a 911
12 emergency surcharge shall not be assessed on the provision of
13 broadband internet access service.

14 B. All communications service providers shall be
15 required to bill and collect the surcharge from their
16 subscribers whose places of primary use, as defined in the
17 federal Mobile Telecommunications Sourcing Act, are in New
18 Mexico. The surcharge required to be collected by the
19 communications service provider shall be added to and stated
20 clearly and separately in the billings to the subscriber. The
21 surcharge collected by the communications service provider
22 shall not be considered revenue of the communications service
23 provider.

24 C. A billed subscriber is liable for payment of the
25 911 emergency surcharge until it has been paid to the

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1 communications service provider.

2 D. A communications service provider has no
3 obligation to take legal action to enforce the collection of
4 the surcharge; an action may be brought by or on behalf of the
5 taxation and revenue department. A communications service
6 provider, upon request and not more than once a year, shall
7 provide to [~~the~~] that department a list of the surcharge
8 amounts uncollected, along with the names and addresses of
9 subscribers who carry a balance that can be determined by the
10 communications service provider to be nonpayment of the
11 surcharge. The communications service provider shall not be
12 held liable for uncollected surcharge amounts."

13 SECTION 5. Section 63-9D-5.1 NMSA 1978 (being Laws 2017,
14 Chapter 122, Section 10) is amended to read:

15 "63-9D-5.1. PREPAID WIRELESS ENHANCED 911 SURCHARGE--
16 COLLECTION AND ADMINISTRATION OF SURCHARGE--LIABILITY OF
17 SELLERS--EXCLUSIVITY OF SURCHARGE.--

18 A. As used in this section:

19 (1) "consumer" means a person who purchases
20 prepaid wireless communication service in a retail transaction;

21 (2) "prepaid wireless communication service"
22 means a wireless communication service that allows a caller to
23 dial 911 to access the 911 system, which service must be paid
24 for in advance and is sold in predetermined units or dollars of
25 which the number declines with use in a known amount;

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1 (3) "prepaid wireless enhanced 911 surcharge"
2 means the charge that is required to be collected by a seller
3 from a consumer in the amount established under Subsection B of
4 this section;

5 (4) "provider" means a person that provides
6 prepaid wireless communication service pursuant to a license
7 issued by the federal communications commission;

8 (5) "retail transaction" means the purchase of
9 prepaid wireless communication service from a seller for any
10 purpose other than resale;

11 (6) "seller" means a person who sells prepaid
12 wireless communication service to another person; and

13 (7) "wireless communication service" means
14 commercial mobile radio service as defined by Section 20.3 of
15 Title 47 of the Code of Federal Regulations, as amended.

16 B. A prepaid wireless enhanced 911 surcharge of one
17 and thirty-eight hundredths percent is imposed on the gross
18 value of each retail transaction. The prepaid wireless
19 enhanced 911 surcharge shall be collected by the seller from
20 the consumer with respect to each retail transaction occurring
21 in this state. The amount of the prepaid wireless enhanced 911
22 surcharge shall be either separately stated on an invoice,
23 receipt or other similar document that is provided to the
24 consumer by the seller, or otherwise disclosed to the consumer.

25 C. For purposes of Subsection B of this section, a

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1 retail transaction that is effected in person by a consumer at
2 a business location of the seller shall be treated as occurring
3 in this state if that business location is in this state, and
4 any other retail transaction shall be treated as occurring in
5 this state if the retail transaction is treated as occurring in
6 this state for purposes of the Gross Receipts and Compensating
7 Tax Act.

8 D. The prepaid wireless enhanced 911 surcharge is
9 the liability of the consumer and not of the seller or of any
10 provider, except that the seller shall be liable to remit all
11 prepaid wireless enhanced 911 surcharges that the seller
12 collects from consumers as provided in this section, including
13 all such surcharges that the seller is deemed to collect where
14 the amount of the surcharge has not been separately stated on
15 an invoice, receipt or other similar document provided to the
16 consumer by the seller.

17 E. The amount of the prepaid wireless enhanced 911
18 surcharge that is collected by a seller from a consumer, if
19 such amount is separately stated on an invoice, receipt or
20 other similar document provided to the consumer by the seller,
21 shall not be included in the base for measuring any tax, fee,
22 surcharge or other charge that is imposed by this state, any
23 political subdivision of this state or any intergovernmental
24 agency.

25 F. When prepaid wireless communication service is

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1 sold with one or more other products or services for a single,
2 non-itemized price, the percentage specified in Subsection B of
3 this section shall apply to the entire non-itemized price
4 unless the seller elects to apply such percentage to:

5 (1) if the amount of the prepaid wireless
6 communication service is disclosed to the consumer as a dollar
7 amount, such dollar amount; or

8 (2) if the seller can identify the portion of
9 the price that is attributable to the prepaid wireless
10 communication service by reasonable and verifiable standards
11 from its books and records that are kept in the regular course
12 of business for other purposes, including non-tax purposes,
13 such portion.

14 G. However, if a minimal amount of prepaid wireless
15 communication service is sold with a prepaid wireless device
16 for a single, non-itemized price, the seller may elect not to
17 apply the percentage specified in Subsection B of this section
18 to such transaction. For purposes of this subsection, an
19 amount of service denominated as ten minutes or less, or five
20 dollars (\$5.00) or less, is minimal.

21 H. Prepaid wireless enhanced 911 surcharges
22 collected by sellers shall be remitted to the taxation and
23 revenue department at the times and in the manner provided with
24 respect to the Gross Receipts and Compensating Tax Act. The
25 taxation and revenue department shall establish registration

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1 and payment procedures that substantially coincide with the
2 registration and payment procedures that apply to the Gross
3 Receipts and Compensating Tax Act. A seller shall be permitted
4 to deduct and retain three percent of prepaid wireless enhanced
5 911 surcharges that are collected by the seller from the
6 consumer.

7 I. The audit and appeal procedures applicable to
8 the Gross Receipts and Compensating Tax Act shall apply to
9 prepaid wireless enhanced 911 surcharges.

10 J. The taxation and revenue department shall
11 establish procedures by which a seller of prepaid wireless
12 communication services may document that a sale is not a retail
13 transaction, which procedures shall substantially coincide with
14 the procedures for documenting sale for resale transactions for
15 the Gross Receipts and Compensating Tax Act.

16 K. No provider or seller of prepaid wireless
17 communication services shall be liable for damages to any
18 person resulting from or incurred in connection with the
19 provision of, or failure to provide, 911 or enhanced 911
20 service, or for identifying, or failing to identify, the
21 telephone number, address, location or name associated with any
22 person or device that is accessing or attempting to access 911
23 or enhanced 911 service.

24 L. No provider or seller of prepaid wireless
25 communication services shall be liable for damages to any

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1 person resulting from or incurred in connection with the
 2 provision of any assistance to any investigative or law
 3 enforcement officer of the United States, this or any other
 4 state, or any political subdivision of this or any other state,
 5 in connection with any investigation or other law enforcement
 6 activity by such law enforcement officer.

7 M. In addition to the protection from liability
 8 provided by Subsections K and L of this section, each provider
 9 and seller shall be entitled to the further protection from
 10 liability as provided pursuant to Section 63-9D-10 NMSA 1978.

11 N. The prepaid wireless enhanced 911 surcharge
 12 applies to retail transactions occurring on or after July 1,
 13 2017."

14 SECTION 6. Section 63-9D-7 NMSA 1978 (being Laws 1989,
 15 Chapter 25, Section 7, as amended) is amended to read:

16 "63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE.--

17 A. The surcharge collected shall be remitted
 18 monthly to the taxation and revenue department, which shall
 19 administer and enforce collection of the surcharge in
 20 accordance with the Tax Administration Act. The surcharge
 21 shall be remitted to the taxation and revenue department no
 22 later than the twenty-fifth day of the month following the
 23 month in which the surcharge was imposed. At that time, a
 24 return for the preceding month shall be filed with the taxation
 25 and revenue department in such form as [~~the~~] that department

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1 and communications service provider shall agree upon. A
2 communications service provider required to file a return shall
3 deliver the return together with a remittance of the amount of
4 the surcharge payable to the taxation and revenue department.
5 The communications service provider shall maintain a record of
6 the amount of each surcharge collected pursuant to the Enhanced
7 911 Act. The record shall be maintained for a period of three
8 years after the time the surcharges were collected.

9 B. From a remittance to the taxation and revenue
10 department made on or before the date it becomes due, a
11 telecommunications company or commercial mobile radio service
12 provider required to make a remittance shall be entitled to
13 deduct and retain one percent of the collected amount or fifty
14 dollars (\$50.00), whichever is greater, as the administrative
15 cost for collecting the surcharge."

16 SECTION 7. Section 63-9D-8 NMSA 1978 (being Laws 1989,
17 Chapter 25, Section 8, as amended) is amended to read:

18 "63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--
19 DISBURSEMENT--REPORTS TO LEGISLATURE.--

20 A. There is created in the state treasury a fund
21 that shall be known as the "enhanced 911 fund". The fund shall
22 be administered by the [~~division~~] department, in consultation
23 with the advisory board.

24 B. All surcharges collected and remitted to the
25 taxation and revenue department shall be deposited in the fund.

1 C. Money deposited in the fund and income earned by
2 investment of the fund are appropriated for expenditure in
3 accordance with the Enhanced 911 Act and shall not revert to
4 the general fund.

5 D. Payments shall be made from the fund to, or on
6 behalf of, participating local governing bodies or their fiscal
7 agents upon vouchers signed by the [~~director of the division~~]
8 secretary or the secretary's designee solely for the purpose of
9 reimbursing local governing bodies or their fiscal agents and
10 communications service providers for their costs of providing
11 enhanced 911 service. A person [~~who~~] that purchases
12 communication services from a communications service provider
13 for the purpose of reselling that service is not eligible for
14 reimbursement from the fund. Money in the fund may be used for
15 the payment of bonds issued pursuant to the Enhanced 911 Bond
16 Act.

17 E. Annually, the [~~division~~] department may expend
18 no more than [~~five~~] seven percent of all money deposited
19 annually in the fund for administering and coordinating
20 activities associated with implementation of the Enhanced 911
21 Act.

22 F. Money in the fund may be awarded as grant
23 assistance to provide enhanced 911 service and equipment upon
24 application of local governing bodies or their fiscal agents to
25 the [~~division~~] department and upon approval by the state board

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1 of finance. If it is anticipated that the funds available to
2 pay all requests for grants will be insufficient, the state
3 board of finance may reduce the percentage of assistance to be
4 awarded. In the event of such reduction, the state board of
5 finance may award supplemental grants to local governing bodies
6 that demonstrate financial hardship.

7 G. After requesting enhanced 911 service from a
8 communications service provider, a local governing body may, by
9 ordinance or resolution, recover from the fund an amount
10 necessary to recover the costs of providing the enhanced 911
11 system in its designated 911 service area. The [~~division~~]
12 department, on behalf of local governing bodies, shall directly
13 pay or reimburse communications service providers for their
14 costs of providing enhanced 911 service. If a communications
15 service provider does not receive payment or reimbursement for
16 the costs of providing enhanced 911 service, the provider is
17 not obligated to provide that service.

18 H. The [~~division~~] department and the advisory board
19 shall report to the legislature each session the status of the
20 fund and whether the current level of the 911 emergency
21 surcharge is sufficient, excessive or insufficient to fund the
22 anticipated needs for the next year."

23 SECTION 8. Section 63-9D-8.1 NMSA 1978 (being Laws 1990,
24 Chapter 87, Section 3, as amended) is amended to read:

25 "63-9D-8.1. [~~DIVISION~~] DEPARTMENT POWERS.--

1 A. In consultation with the advisory board, the
2 ~~[division]~~ department may adopt reasonable rules necessary to
3 carry out the provisions of the Enhanced 911 Act.

4 B. In consultation with the advisory board, the
5 ~~[division]~~ department may fund enhanced 911 systems pursuant to
6 the provisions of the Enhanced 911 Act.

7 C. ~~[Division]~~ Department powers are limited and do
8 not include power to intervene between two vendors or restrict
9 marketing efforts of vendors.

10 D. In consultation with the advisory board, the
11 ~~[division]~~ department and the local governing body may
12 establish 911 service areas.

13 E. Unless otherwise provided by law, no rule
14 affecting any person, agency, local governing body or
15 communications service provider shall be adopted, amended or
16 repealed without a public hearing on the proposed action before
17 the ~~[director of the division]~~ secretary or a hearing officer
18 designated by the ~~[director]~~ secretary. The public hearing
19 shall be held in Santa Fe unless otherwise permitted by
20 statute. Notice of the subject matter of the rule, the action
21 proposed to be taken, the time and place of the hearing, the
22 manner in which interested persons may present their views and
23 the method by which copies of the proposed rule or proposed
24 amendment or repeal of an existing rule may be obtained shall
25 be published once at least thirty days prior to the hearing in

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1 a newspaper of general circulation and mailed at least thirty
2 days prior to the hearing date to all persons or agencies who
3 have made a written request for advance notice of the hearing
4 and to all local governing bodies and communications service
5 providers.

6 F. All rules shall be filed in accordance with the
7 State Rules Act."

8 SECTION 9. A new section of the Enhanced 911 Act is
9 enacted to read:

10 "[NEW MATERIAL] ENHANCED 911 ADVISORY BOARD--CREATION--
11 MEMBERSHIP--APPOINTMENTS--TERMS.--

12 A. The "enhanced 911 advisory board" is created as
13 an advisory body to the department. The advisory board shall
14 be composed of nine voting members as follows; provided that no
15 more than one member shall be from the same county and all
16 members of the board shall be local government representatives:

17 (1) ex officio, the chair of an emergency
18 services affiliate of an entity that represents counties in the
19 state;

20 (2) ex officio, the president of an emergency
21 services affiliate of an entity that represents municipalities
22 in the state;

23 (3) one member, ex officio, who:

24 (a) shall be appointed by the governor;

25 (b) is a geospatial information systems

1 manager; and

2 (c) is a member of a geospatial
3 information systems entity affiliated with an entity that
4 represents counties in the state;

5 (4) two members, appointed by the governor
6 from a list of names provided by the president pro tempore of
7 the senate, as follows:

8 (a) one representative of a county or
9 municipal fire department; and

10 (b) ex officio, a director or manager of
11 a public safety answering point;

12 (5) two members, ex officio, appointed by the
13 governor, each of whom shall either be a current director or
14 manager of a public safety answering point;

15 (6) one member, ex officio, who is a director
16 or manager of a public safety answering point, appointed by the
17 governor from a list of names provided by the speaker of the
18 house of representatives; and

19 (7) one representative of county or municipal
20 law enforcement appointed by the speaker of the house of
21 representatives.

22 B. Recommendations for advisory board appointments
23 shall be made to the governor by the association of public-
24 safety communications officials international, New Mexico
25 chapter; the national emergency number association; an entity

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1 that represents counties in the state; and an entity that
2 represents municipalities in the state.

3 C. Appointing authorities shall strive to ensure
4 that the composition of the advisory board represents urban and
5 rural areas of the state.

6 D. Advisory board members shall serve for a term of
7 four years; provided that at the first meeting of the advisory
8 board, the initial members shall draw lots to determine the
9 length of their terms as follows:

10 (1) two members shall serve an initial term of
11 two years;

12 (2) three members shall serve an initial term
13 of three years; and

14 (3) four members shall serve an initial term
15 of four years.

16 E. Advisory board members shall serve until a
17 successor is duly appointed and confirmed.

18 F. An advisory board member shall not serve more
19 than two successive terms.

20 G. The secretary shall call the initial meeting of
21 the advisory board, at which time the advisory board shall
22 elect a chair, vice chair and any other officers it deems
23 necessary and appropriate to serve one-year terms in those
24 offices. After the initial meeting of the advisory board, the
25 chair shall call and preside over advisory board meetings. The

1 vice chair shall preside over advisory board meetings and take
2 necessary actions of the chair when the chair is absent.

3 H. After the initial meeting of the advisory board,
4 the advisory board shall elect a chair and vice chair yearly.
5 After the expiration of the terms of the initial advisory board
6 chair and vice chair, nominees for chair and vice chair shall
7 have a minimum of one year of experience serving on the
8 advisory board.

9 I. The advisory board shall meet at least once per
10 calendar quarter.

11 J. For voting purposes, a quorum shall consist of
12 at least five advisory board members. Any official action of
13 the advisory board shall require a vote of a quorum of advisory
14 board members.

15 K. A member of the advisory board who fails to
16 attend at least one-half of the regularly scheduled meetings of
17 the advisory board within a twelve-month period shall
18 automatically be removed and the successor member shall be
19 appointed by the appointing authority to serve out the
20 remaining term of the member being replaced.

21 L. The advisory board shall devise bylaws for
22 operation of the advisory board.

23 M. Public members of the advisory board may receive
24 per diem and mileage in accordance with the provisions of the
25 Per Diem and Mileage Act and shall receive no other

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1 compensation, perquisite or allowance for their service on the
2 advisory board."

3 SECTION 10. Section 63-9D-13 NMSA 1978 (being Laws 1990,
4 Chapter 61, Section 2, as amended) is amended to read:

5 "63-9D-13. DEFINITIONS.--As used in the Enhanced 911 Bond
6 Act:

7 A. "board" means the state board of finance;

8 [~~B. "division" means the local government division
9 of the department of finance and administration;~~]

10 B. "department" means the department of information
11 technology;

12 C. "enhanced 911 bonds" means the bonds authorized
13 in the Enhanced 911 Bond Act;

14 D. "enhanced 911 project" means actions authorized
15 under Section 63-9D-14 NMSA 1978 that pertain to a specific
16 component of the enhanced 911 system; and

17 E. "enhanced 911 revenue" means the revenue to and
18 the income of the enhanced 911 fund that are pledged to the
19 payment of enhanced 911 bonds under the Enhanced 911 Bond Act."

20 SECTION 11. Section 63-9D-17 NMSA 1978 (being Laws 1990,
21 Chapter 61, Section 6, as amended) is amended to read:

22 "63-9D-17. BOND AUTHORIZATION.--The board may issue and
23 sell enhanced 911 bonds in compliance with the Enhanced 911
24 Bond Act. The board shall schedule the issuance and sale of
25 the bonds in the most expeditious and economical manner upon a

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1 finding by the board that the [~~division~~] department has
2 certified that the need exists for the issuance of bonds and
3 upon an action by the board designating the enhanced 911 fund
4 to be the source of pledged revenues."

5 SECTION 12. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,
6 PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND
7 REFERENCES IN LAW.--

8 A. On July 1, 2019, all programs, functions,
9 personnel, appropriations, money, statutory funds, records,
10 furniture, equipment, supplies and other property belonging to
11 the local government division of the department of finance and
12 administration in relation to the administration of the
13 enhanced 911 program pursuant to the Enhanced 911 Act are
14 transferred to the department of information technology.

15 B. Beginning on July 1, 2019, all contractual
16 obligations of the local government division of the department
17 of finance and administration in relation to the administration
18 of the enhanced 911 program pursuant to the Enhanced 911 Act
19 are binding on the department of information technology.

20 SECTION 13. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2019.

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