

[Senate Bill 84](#) (Budget and Fiscal Review)

Date: Enrolled

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Program: Regional Railroad Accident Preparedness and Immediate Response (RRAPIR) Fee

Prepaid Mobile Telephony Services (MTS) Surcharge and Local Charge

Sponsor: Author (Railroad Fee)

Board of Equalization (Prepaid MTS Surcharge provisions)

GC Article 3.9 (commencing with Section 8574.30) (RRAPIR Fee)

RTC Sections 41030, 41032, 42010, 42010.7, 42023, 42023.5, 42101.7, & 42104 (Prepaid MTS Surcharge)

Effective: Immediately upon enactment

This analysis is limited to the provisions which impact the Board of Equalization (BOE).

Summary: Among its provisions, this budget trailer bill imposes a BOE-collected fee on owners of hazardous materials transported by rail in this state. (GC Article 3.9, Section 8574.30)

This bill also makes various changes to the Prepaid MTS Surcharge:

- Changes the notification date and method of publicizing the annual Emergency Telephone Users (911) Surcharge Act¹ rate (RTC §§41030 and 41032);
- Clarifies that direct sellers must electronically report the 911 surcharge portion of the prepaid MTS surcharge to the BOE pursuant to the 911 Surcharge Act (RTC §42010);
- Specifies the account or fund into which direct seller prepaid MTS surcharge remittances are deposited (RTC §§42010 and 42023);
- Clarifies expenditure language and the agency responsible to allocate moneys deposited into the Prepaid MTS 911 Account and Prepaid MTS Public Utilities Commission (PUC) Account, respectively (RTC §42023);
- Relieves a prepaid MTS seller, other than a direct seller, with de minimis prepaid MTS sales of less than \$15,000 the previous calendar year from collecting and remitting the prepaid MTS surcharge and local charge (RTC §§42010.7 and 42101.7);
- Allows the Director of Finance to approve a short-term loan for Fiscal Year 2015-16 from the General Fund to the Prepaid MTS Surcharge Fund and Local Charges for Prepaid MTS Fund to provide adequate cash flow for BOE prepaid MTS surcharge and local charge administration and collection expenses (RTC §§42023.5 and 42104).

¹ Part 20 (commencing with Section 41001) of Division 2 of the Revenue and Taxation Code (RTC).

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REGIONAL RAILROAD ACCIDENT PREPAREDNESS AND IMMEDIATE RESPONSE FEE
Government Code Article 3.9 (commencing with Section 8574.30)

Purpose: To provide funding for regional and onsite response capabilities in the event of a large-scale hazardous materials release from a train accident.

Existing Law: Health and Safety Code. Under existing law, the Health and Safety Code² imposes various hazardous waste fees on the generation, storage, treatment, and disposal of hazardous wastes. These fees are collected by either the BOE or the Department of Toxic Substances Control (DTSC). Hazardous waste fees revenues fund DTSC's administration of the hazardous waste regulatory program and the state Superfund program.

Government Code. California law³ imposes an oil spill prevention and administration fee upon crude oil or petroleum products received at a refinery or marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

The Administrator, a Governor's appointee in the Department of Fish and Wildlife, annually sets the fee rate. The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies.

Public Utilities Code. Existing law⁴ requires the California Public Utilities Commission (CPUC) to annually determine a fee to be paid by every common carrier and related business subject to the jurisdiction of CPUC, including, but not limited to, every railroad corporation.

The annual fee is established to produce an amount equivalent to the authorized CPUC budget for the same year. The amount includes adjustments appropriated by the Legislature and an appropriate reserve to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year.

For fiscal year 2014-15, the railroad corporation fees are fixed as follows:

Class I: Burlington Northern Santa Fe \$2,072,844.00
 Union Pacific \$5,077,395.00

Class II and III (shortline) 0.27% of gross revenue, minimum of \$500 each

The annual fee is collected by CPUC and transmitted at least quarterly to the Treasurer for deposit into the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

The fees paid by railroad corporations are required to be used for the CPUC's state-funded railroad investigation and enforcement activities, other than the rail safety activities funded by the Transportation Planning and Development Account.

² Division 20, Chapters 6.5, 6.8, and 6.11 of the Health and Safety Code; Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code (RTC).

³ Government Code (GC) Section 8670.40.

⁴ Public Utilities Code Section 421.

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In addition, current law⁵ requires all rail operators to provide a risk assessment to the CPUC that describes all of the following:

- Rail facility location and functions.
- Movement and storage of cargo, including hazardous material cargo, at the rail facility, including the frequency of that movement or storage.
- Information regarding rail operator safety practices, training programs, and emergency response procedures at the rail facility.
- Rail operator communication procedures with state and local personnel that would be involved in responding to an act of terrorism, sabotage, or other crimes at the rail facility.

Current law⁶ also covers hazardous materials transported by rail, and requires each railroad corporation that transports hazardous materials in the state to provide:

- A system map of the state to the Office of Emergency Services (OES) and to CPUC, showing practical groupings of mileposts on the system and mileposts of stations, terminals, junction points, road crossings, and the locations of natural gas and liquid pipelines in railroad rights-of-way.
- Annually to the OES a copy of a publication which identifies emergency handling guidelines for the surface transportation of hazardous materials, unless otherwise provided.
- Specified information if there is a train incident resulting in a release or an overturned railcar or an impact which threatens a release of a hazardous material.

Proposed Law: This bill imposes an unspecified fee on the owner of hazardous materials at the time the hazardous materials are transported by rail in this state. The Director of the OES shall establish a fee schedule based on the 25 most hazardous material commodities transported by rail car in California. Prior to the adoption of regulations identifying those 25 commodities, the fee applies to the top 25 hazardous material commodities identified by the Association of American Railroads Bureau of Explosives' Annual Report of Non-Accident Releases of Hazardous Materials Transported by Rail, published in August 2013. Those fee schedules determine the amounts paid by each hazardous materials owner. Hazardous materials owners will pay the fee to the railroads and the railroad will remit the collected fees to the BOE.⁷

The fee will be imposed within six months of the Director establishing the fee schedules. Liability will be based on each loaded rail car as follows:

- If the loaded rail car enters the state from outside this state, the fee is imposed on the owner of the hazardous material at the time the loaded rail car enters this state.
- If the rail car or truck is loaded within this state, the fee is imposed at the time of loading of the hazardous material into or onto the rail car for transport in or through this state.

Any hazardous material owner or railroad that has paid the fees shall not be assessed additional fees for transporting the same hazardous materials in the same rail cars on a different railroad within the state.

Revenues collected, less refunds and expense reimbursement to the BOE, would be deposited into the Regional Railroad Accident Preparedness and Immediate Response Fund (Fund), which this bill creates. The Fund will repay any moneys loaned to pay OES implementation costs. Upon appropriation by the Legislature, moneys in the Fund will be used to plan, develop, create, acquire, support, and maintain emergency response capabilities to prepare for, and respond to, rail car accidents involving large-scale hazardous materials releases.

⁵ The Local Community Rail Security Act of 2006, Article 7.3 (commencing with Section 7665), of Chapter 1 of Division 4 of the Public Utilities Code.

⁶ Hazardous Materials Transportation by Rail, Article 7.5 (commencing with Section 7671), of Chapter 1 of Division 4 of the Public Utilities Code.

⁷ The return and fee amounts are remitted to the BOE by the person required to be registered with the BOE.

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Definitions. This bill defines the following terms:

- “Board” means the State Board of Equalization.
- “Director” means the Director of Emergency Services.
- “Fund” means the Regional Railroad Accident Preparedness and Immediate Response Fund established pursuant to Section 8574.44.
- “Hazardous material” means a material that the United States Department of Transportation (USDOT) has designated as a hazardous material for purposes of transportation in Part 172 of Title 49 of the Code of Federal Regulations (CFR).
- “Office” means the Office of Emergency Services.
- “Owner” means the person who has the ultimate control over, and the right to use or sell, the hazardous material being shipped. There is a rebuttable presumption that the shipper, consignor, or consignee of the hazardous material is the owner of the hazardous material. This presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but is not limited to, a bill of lading, shipping document, bill of sale, or other medium, that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee.
- “Railroad” has the same meaning as defined in PUC Section 229.
- “Rail car” means a loaded or unloaded railroad car or rolling stock designated to transport hazardous material commodities, and includes, but is not limited to, those railroad cars subject to the requirements of Part 179 (commencing with Section 179.1) of Title 49 of the CFR, or a successor set of regulations adopted by the US DOT.

Railroads. Railroad operators that transport hazardous material by rail car shall register with the BOE and collect the fee from the owner of the hazardous material. Fees are paid to the BOE with the quarterly return. Any fees collected by the railroad from the hazardous material owner that have not been remitted to the BOE are considered a debt owed to the state by the railroad.

Hazardous material owner. The hazardous material owner is liable for the fee until it has been paid to the BOE, except that payment to a railroad registered with the BOE for collection of the fee is sufficient to relieve the owner from further fee liability.

BOE administration. The BOE will assess and collect the fee in accordance with the Fee Collection Procedures Law (FCPL).⁸ The references in the FCPL to “fee” include the fee imposed by this bill, and the reference to “feepayer” includes the person required to pay the fee imposed by this bill.

The FCPL generally provides for the BOE’s administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE’s authority to adopt regulations related to the FCPL’s administration and enforcement.

Emergency regulation authority is also provided to the BOE.

Petition for redetermination and claim for refund. The BOE would handle and decide petitions for redetermination and claims for refund, except for those filed on the grounds that the contents of the rail car is or is not a hazardous material. The BOE would forward such petitions or refund claims to the Director for a decision.

Returns. The railroads required to register with the BOE shall file quarterly returns, on or before the last day of the calendar month following the end of the calendar quarter. The railroad shall pay the fees to the BOE with the return, based on the number of loaded hazardous material rail cars transported within the state.

⁸ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

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Contribution in kind. OES may authorize partial fee payment through contributions in kind of equipment, materials, or services.

Fee collector reimbursement. The railroad is entitled to collect an amount not to exceed 5% of the fee collected to offset their administrative collection costs.

Fee exemption. OES may exempt from the fee certain shipments of hazardous materials as follows:

- Those shipments of hazardous materials that do not merit inclusion in the state regional railroad accident preparedness and immediate response plan, as specified, and;
- Those shipments of hazardous materials that do not merit additional governmental preparation to respond to their release in the event of a railroad accident.

The fee shall not be imposed on a hazardous materials owner or a railroad that has paid the fee as required by this bill for further transporting the same hazardous materials in the same rail cars on a different railroad within the state.

Fund balance and fee amounts. The Director has the authority to collect an amount not to exceed Fund balances as follows:

- 2016 and 2017 calendar year Fund balances are capped at \$20 million.
- Commencing January 1, 2018, the Fund balance is capped at \$10 million.
- Calendar years subsequent to 2018, the Director shall adjust the amount of the fee if appropriate, at least every three years, taking into consideration the existing and expected operational and continued resource requirements.

The BOE is responsible for informing the Director if collected fee amounts reach the specified Fund balances.

As a budget trailer bill that makes an appropriation, this bill is effective immediately, but the surface transportation hazardous material fee is operative within six months after establishment of the schedules of fees.

Background: In 1991, Senate Bill 48 (Thompson) required the BOE to implement the collection of the Hazardous Spill Prevention Fee to be paid by each surface transporter of hazardous materials on California highways and railroad lines, which was administered in cooperation with DTSC.

The fees were deposited into the Rail Accident Prevention and Response Fund, which that bill created, to provide funding for cleanup costs related to hazardous spills and to finance the Railroad Accident Prevention and Immediate Deployment Force operated by DTSC. The Hazardous Spill Prevention Fee expired on December 31, 1995.

In 2002, Assembly Bill 2479 (Jackson) would have required the BOE to implement the collection of a fee to be paid by each surface transporter of a substance of concern in accordance with regulations adopted by the DTSC. That bill failed to pass out of the Assembly Appropriations Committee.

In 2006, Assembly Bill 2822 (Mullin) would have required the BOE to implement the collection of a fee imposed upon each railroad corporation that transports a hazardous material in the state. That bill failed in the Assembly Transportation Committee.

In 2014, SB 1319 (Hill, et. al, as amended 08/22/14) would have imposed a Regional Railroad Accident Preparedness and Immediate Response Fee. The unspecified fee would have been imposed on hazardous material owners at the time the hazardous material is transported by loaded rail tank car. A similar bill, SB 506 (Hill and Pavley, as amended 06/15/14), would have imposed an unspecified fee on the hazardous material owners at the time the hazardous material is transported by loaded railroad tank car. SB 1319 was gutted an amended to an unrelated bill, while SB 506 failed in the Assembly.

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Last year the Legislature enacted SB 861,⁹ which generally expands the oil spill prevention and administration fee (prevention fee) and the oil spill response fee to be used to respond to spills in inland waters of the state. SB 861 effectively expanded the prevention fee to apply to crude oil rail shipments that were entering California from other states and countries. The prevention fee was expanded to include crude oil and petroleum products received at a refinery in this state by any mode of delivery that passed over, across, under, or through waters of the state. Crude oil or petroleum products are rebuttably presumed to meet this criteria. Effective June 20, 2014, the bill provided a 90-day delayed operative date for the prevention fee, which was operative on September 18, 2014.

In General: In general, federal laws regarding railroads cover safety, hazardous material transportation, hazardous material emergencies, inspections, and security. Federal laws generally preempt most state regulations.¹⁰ The Federal Railroad Administration (FRA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the USDOT are responsible for federal rules and enforcement. The PHMSA is specifically responsible for the protection of people and the environment from the risks of hazardous material transportation. With respect to the transportation of hazardous material, federal laws generally preempt state laws and regulations. However, federal statutes provides that a State may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.¹¹

In California, the state OES assists local governments in emergency preparedness, response, recovery, and hazard mitigation efforts. The CPUC shares authority with the federal government to enforce federal safety requirements and state safety rules. The CPUC is responsible for regulating railroad safety where federal regulations do not preempt state authority. The Federal Railroad Safety Act of 1970 (FRSA) and the Rail Safety Improvement Act (RSIA) of 2008, generally preempt state laws and regulations that have the purpose or effect of regulating rail transportation and safety that are covered by federal laws and regulations.

Both federal and state governments, as well as national industry associations have investigated, reported, analyzed, and debated the recent increase in oil transportation by rail. Although information is available regarding reported and estimated amounts of oil shipments by rail, it is not comprehensive information collected on all types of hazardous material shipped by rail. According to some reports, the difficulty with regulating hazardous material is that although the DOT requires shippers and carriers to identify hazardous material and keep records, this information is considered proprietary and not accessible to the public. Consequently, it is currently difficult to obtain or estimate the amount or frequency of hazardous material transported by rail.¹²

Commentary:

- 1. While the fee is imposed on the hazardous material owner, the railroad will be responsible for collection.** The fee schedule will be set by OES regulations, which will be based on the top 25 most hazardous material commodities. Prior to the adoption of the OES regulation, the fee will be imposed on the owners of the top 25 hazardous material commodities identified in a railroad industry report.¹³ Within six months of that rate setting, the BOE will begin fee collection.¹⁴ In

⁹ A budget trailer bill, SB 861 (Ch. 35, Stats. 2014).

¹⁰ Section 20106 of Subchapter I of Chapter 201 of Part A of Subtitle V, of Title 49 of the US Code, relates to preemption of federal laws and regulations related to railroad safety and security.

¹¹ Subdivision (f) of Section 5125 of Chapter 51 of Subtitle III of Title 49 of the US Code, specifies the hazardous materials transportation fee and reporting requirements by the State. Section 5125 is related to preemption of federal laws and regulations related to hazardous materials transportation.

¹² [US Rail Transportation of Crude Oil, Background and Issues for Congress](#), California [Emergency Response to Rail Accidents, Regulatory Framework, Moving Crude Oil by Rail](#), Association of American Railroads, [Oil by Rail Safety in California](#), State of California, Interagency Rail Safety Working Group.

¹³ Association of American Railroads Bureau of Explosives' Annual Report of Non-Accident Releases of Hazardous Materials Transported by Rail, published in August 2013.

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order to gain efficiencies and streamline administration, the railroads will collect the fee from the owner of the hazardous material. As the return and fees are due quarterly, it is expected that the railroads would use their shipping information to bill the hazardous materials owners for transporting hazardous materials.

2. **BOE will handle appeals and refunds, except those related to qualifying “hazardous material.”** This bill defines “hazardous material” and places responsibility with OES for deciding any appeal or claim for refund based on the grounds that the rail car content is not a hazardous material.
3. **“Owner” of hazardous material.** By definition, “owner” means the person who has the ultimate control over, and the right to sell, the hazardous material being shipped. To assist the BOE and railroads, the shipper, consignor, or consignee of the hazardous material is rebuttably presumed to be the owner of the hazardous material.

The presumption may be overcome by showing that the ownership of the hazardous material rests with someone other than the shipper, consignor, or consignee. Evidence to rebut the presumption may include, but is not limited to, a bill of lading, shipping document, bill of sale, or other medium that shows the ownership of the hazardous material rests in a person other than the shipper, consignor, or consignee. The BOE will decide any issues regarding the rebuttable presumption of hazardous material ownership.

4. **Fee payment through a “contribution in kind” would be unique.** The BOE administers numerous programs with tax credits, exemptions, exclusions, refunds, and appropriations. The contribution in kind option provided in this bill is new to the BOE. BOE staff is unaware of any other California statute or regulation, other state statute, or federal or local government program that provides a similar payment structure. Concerns regarding contribution in kind payments generally deal with specifying roles and responsibilities, which include, but are not limited to:
 - OES responsibilities with respect to valuation of assets, reporting of credit to the BOE, fee payer, or railroad, and drafting regulations to address policy or legal issues with respect to payment of fees through a contribution in kind.
 - Will the Department of Finance provide accounting guidance to BOE through the State Administrative Manual?
 - OES can authorize payment of a portion of fees owed through a contribution in kind. OES needs to provide a structure for the fee payers to be able to claim a “credit” up to the authorized payment amount. BOE staff will work with OES to understand how this provision will be administered.
 - Could the contribution in kind be a violation of California Constitution, Article 16, Section 6, which prohibits giving or lending state credit?
5. **Fee collector reimbursement provision.** Railroads are entitled to collect “an amount not to exceed 5 percent of the fee collected . . . to offset the administrative cost to collect the fee.” This language suggests the railroad could collect a surcharge, not to exceed 5% of the fee collected, from the hazardous material owner, which may lead to varying reimbursement amounts.

Other fee programs administered by the BOE allow a retailer to retain a specified amount or percentage of the collected fees as reimbursement for their administrative costs. As this bill provides the railroads the authority to collect their own fee to offset fee collection costs, the BOE will not be capturing this information on a return, nor will this amount be an audit issue.

¹⁴ BOE staff would prefer the fee to be due “on the first day of the first calendar quarter commencing AFTER six months of establishing the fee.”

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6. **The bill provides an exemption for a railroad shortline.** The hazardous material owner will not be assessed a second fee for transporting the same hazardous material in the same rail cars on a different railroad within the state. The exemption would apply when a Class III railroad, or shortline, handled the same loaded rail cars from a Class I railroad.
7. **Administrative start-up cost funding is essential.** This bill is effective upon enactment and requires the Director to establish new fee schedules. Within six months of the established fee schedules, the BOE must begin to collect the fee. Fee implementation would likely begin in the middle of fiscal year 2015-16, with fee collection following soon after. Upfront BOE implementation cost reimbursement is essential. The bill should provide either a direct appropriation to the BOE for fiscal year 2015-16 administrative costs or a loan from the General Fund (GF) to the Fund. The loan would be repaid from collected fees.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to administer the proposed fee program. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the new program. A GF diversion typically results in a negative impact on GF-supported programs and related State and local government revenues.

8. **Technical amendments.** The term “loaded hazardous material rail car or truck” should be defined. Because the amount of the fee is based on the number of rail cars “loaded” with hazardous materials, any ambiguity about whether a rail car is “loaded” could create audit disputes. Presently, it is unclear if there is a de minimis amount allowed, or if the fee is imposed on any amount of hazardous material loaded onto a rail car or truck.

GC Section 8574.32 (c) provides an exemption for “those shipments of hazardous materials” under specified conditions. This provision is permissive and allows OES to exempt certain shipments, as opposed to hazardous materials. The exemption, if by shipments, should be detailed in statute or regulation in order to provide sufficient administrative guidance to the transporters, hazardous materials owners, and the BOE.

Administrative Costs: The BOE would incur substantial costs to develop a new fee program. These costs would include developing computer programs, developing forms and publications, creating registration for railroads, processing returns, carrying out compliance and audit efforts, developing regulations, training staff, and answering fee-related inquiries. As explained previously, the fees will be imposed and collected six months following the OES adoption of a fee rate schedule. Therefore, depending on the timeframe for OES to complete their regulatory process, BOE costs will range between \$1.357 and \$1.486 million in FY 2015-16, between \$775,000 and \$957,000 in FY 2016-17, and between \$941,000 to \$981,000 in FY 2017-18 and ongoing.

In addition, OES and BOE staff need to address various administrative issues that may affect future costs: payment of fees through contribution in kind; OES fee exemptions; OES fee adjustments; and the “owner” rebuttable presumption.

Revenue Impact: Because the bill does not specify a fee amount, no revenue can be estimated.

RATE CHANGE NOTIFICATION DEADLINE AND METHOD: 911 SURCHARGE ACT
Revenue and Taxation Code Sections 41030 and 41032

Existing Law: Under existing law, the 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication service and Voice over Internet Protocol (VoIP) service that provides access to the “911” emergency system by utilizing the digits 9-1-1 by any service user in this state.

RTC Section 41030 requires the OES¹⁵ to annually determine, on or before October 1, a surcharge rate that the OES estimates will produce sufficient revenue to fund the current fiscal year’s 911 program costs.

As of September 30, 2014, Section 41030 requires the OES to notify the Board of Equalization (BOE) of the 911 surcharge rate by October 15 each year. Section 41030 formerly was silent as to the date by which the OES must notify the BOE of the new rate. The October 15 notification date remains in effect until January 1, 2020, and as of that date is repealed.¹⁶

RTC Section 41031 requires the BOE to “fix” the 911 surcharge rate each year after notification from the OES of the rate for the following calendar year. RTC Section 41032 requires that, immediately upon notification by OES and fixing of the surcharge rate, the BOE shall publish the new rate in its minutes, no later than November 15, and notify by mail every BOE-registered service supplier of the new rate.

Proposed Law: This bill amends RTC Section 41030 to revise the date by which the OES must notify the BOE of the new 911 surcharge rate from October 15 to October 1.

The bill also amends RTC Section 41032 to require the BOE to notify service suppliers of the new rate by available means including, but not limited to, mail, electronic mail, and web site postings.

Background: In 2014, [Assembly Bill \(AB\) 1717](#) (Ch. 885) enacted the Prepaid Mobile Telephony Services Surcharge Act and Local Prepaid Mobile Telephony Services Collection Act (Collection Acts)¹⁷ to impose state and local prepaid MTS surcharges. The bill also amended the 911 Surcharge Act (RTC Section 41030) to specify October 15 as the date by which the OES must annually notify the BOE of the new 911 surcharge rate and prepaid MTS surcharge rate. [Senate Bill \(SB\) 1211](#) (Ch. 926, Stats. 2014) also amended Section 41030 to require the OES to include Next Generation 911 technology and services costs when determining the 911 surcharge rate. Both SB 1211 and AB 1717 incorporated double-jointing language.

In General: The ministerial function to fix and publish the new 911 surcharge rate in the minutes by November 15 each year places a degree of urgency upon both the OES and the BOE. Although the OES generally provides the new 911 surcharge rate to the BOE on or before October 1 each year, 2014 legislation amended the 911 Surcharge Act to impose an October 15 deadline for providing this information. The new deadline could delay BOE’s receipt of the new rate until October 15, and thereby impede its ability to meet its own November 15 deadline for publishing the rate in the BOE’s minutes.

¹⁵ In 1980, AB 3022 (Ch. 1035) amended the 911 Surcharge Act to transfer the responsibility for determining the surcharge rate from the BOE to the Department of General Services (DGS). In 2009, the duties, functions, employees, property, and related funding were transferred from the DGS to the Office of the State Chief Information Officer, which was subsequently renamed the CTA. In 2013, the surcharge rate determination was transferred to the OES.

¹⁶ As amended by [SB 1211](#) (Ch. 926, Stats. 2014), Section 2.5 is operative from January 1, 2015, until January 1, 2020. On January 1, 2020, Section 2.7 becomes operative.

¹⁷ Part 21 (commencing with Section 42001) and Part 21.5 (commencing with Section 42100) of Division 2 of the RTC.

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Fiscal Year	OES Notification to BOE	Date Published in BOE Minutes
2010-11	August 30, 2010	September 15, 2010
2011-12	October 2, 2011	October 25, 2011
2012-13	October 1, 2012	October 23, 2012
2013-14	September 6, 2013	October 29, 2013
2014-15	September 5, 2014	October 14, 2014

The Members of the BOE are required to meet monthly, however, the dates on which they meet change each year. In addition, the BOE is subject to the Bagley-Keene Open Meeting Act (commencing with GC Section 11120) which requires the BOE to issue a Public Agenda Notice at least 10 days prior to each meeting. The 10-day advance notification period, coupled with the November 15 rate publication deadline likely will make meeting this deadline difficult.

If the OES notifies the BOE of the new 911 surcharge rate on October 15 each year, it is very unlikely the new rate can appear as an information item on an October Board agenda. Consequently, the 911 rate publication would be deferred to the November agenda. However, if the November Board meeting is held after November 15, the Members of the BOE would have to hold a special Board Meeting solely for the purpose of publishing the new 911 rate in its minutes.

Commentary:

- More efficient communication.** In addition to publishing the new rate in its minutes, the BOE notifies service suppliers of the new rate by mail, which is currently required by law. This bill allows direct mail notification to continue, but will also allow for transition to electronic mail (e-mail) or other means of notification at some point in the future. Lastly, the BOE will continue to post the new rate on its [website](#). The 2015 surcharge rate can be found at <http://www.boe.ca.gov/pdf/boe863.pdf>.
- Adequate time.** This bill provides the BOE necessary time to publish the new rate in its minutes and allows the BOE to more timely and efficiently notify services suppliers of the annual rate change notification.

Administrative Costs: This provision results in no additional BOE administrative costs.

Revenue Impact: This provision does not impact state revenues.

<p>PREPAID MTS COLLECTION ACT DIRECT SELLERS: ELECTRONIC RETURN FILING <i>Revenue and Taxation Code Section 42010</i></p>

Existing Law: 911 Surcharge Act. The 911 Surcharge Act imposes a surcharge on amounts paid by every person in the state for both of the following:

- Intrastate telephone communication service, and
- VoIP service that provides access to California users of the “911” emergency system by utilizing the digits 9-1-1.

The 911 Surcharge Act requires a service supplier to collect the surcharge from each service user at the time of billing.

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RTC Section 41051 provides that the 911 surcharge is due monthly to the BOE. The surcharge amount that a service supplier collects in one calendar month must be remitted (paid) to the BOE on or before the last day of the second month following the month in which the surcharges were collected.

RTC Section 41052 requires a service supplier to file a monthly return with the BOE on or before the last day of the second month following each month in which the surcharges were collected.

Prepaid MTS Collection Acts (Collection Acts). Beginning January 1, 2016, the Collection Acts impose a prepaid MTS surcharge and local charge on each prepaid consumer as a percentage of the sales price of each retail transaction. The Collection Acts require the seller to collect the prepaid MTS surcharge and local charge at the time of the retail transaction. The prepaid MTS surcharge calculation includes:

- The 911 surcharge rate, and
- The CPUC reimbursement fee and telecommunications universal service surcharges.

The local charge is the combined total of the local charge rates, as calculated pursuant to RTC Sections 42102 and 42102.5, which the local jurisdiction has adopted. The local charge is collected at the same time and in the same manner as the prepaid MTS surcharge.

RTC Section 42004 defines a “seller” to mean “a person that sells prepaid mobile telephony service to a person in a retail transaction.” The term seller *includes a direct seller*. Section 42004 defines a “direct seller” to mean:

A prepaid MTS provider or service supplier, as defined in Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited, to any of the following:

(A) A telephone corporation, as defined by Section 234 of the Public Utilities Code.

(B) An interconnected VoIP service, as defined in Section 285 of the Public Utilities Code.

(C) A retailer, as defined by Section 6203, that is a member of the same commonly controlled group, as defined in Section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

RTC Section 42010 requires a direct seller to pay to the BOE that portion of the prepaid MTS surcharge that consists of the 911 surcharge under the 911 Surcharge Act. Direct sellers must pay the CPUC surcharge and local charge portion of the prepaid MTS surcharge directly to the CPUC and local agencies, respectively.

RTC Section 42021(b) requires a seller to file a quarterly return using electronic media. Section 42021(d) states that the “section applies only to those remittances of the prepaid MTS surcharge or local charges that are required to be remitted to the board pursuant to this part and as this section is made applicable to Part 21.1 (commencing with Section 42100) pursuant to subdivision (a) of Section 42103.”

Proposed Law: This bill amends RTC Section 42010(f) to clarify that a direct seller is required to file electronic returns when paying to the BOE that portion of the prepaid MTS surcharge that is for the 911 surcharge, consistent with the enacting legislation’s intent. Requiring direct sellers to electronically file returns when remitting the required payments pursuant to the 911 Surcharge Act makes the prepaid MTS surcharge much easier to administer, and allows BOE to obtain timely and accurate information from direct sellers.

Background: In 2014, AB 1717 (Ch. 885) enacted the Collection Acts to create standardization with respect to the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

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As the Collection Acts made their way through the Legislature, stakeholders provided suggested technical amendments to the bill. One such amendment included the addition of a missing word (“that”) in Section 42010(j) to clarify the seller’s liability for failing to collect the prepaid MTS surcharge. While the August 22, 2014, version of AB 1717 incorporated the missing word into Section 42010(j), the remainder of the section that pertains to the local charge was inadvertently overlooked and is inconsistent with other BOE-administered end-user taxes.

Commentary: Shortly prior to enactment of the Collection Acts, the bill was amended to add a new subdivision (d) to Section 42021. Section 42021(d) states that the section applies only to prepaid MTS surcharge and local charge payments required to be paid to the BOE pursuant to the Collection Acts.

Section 42021(d) was not intended to exclude a direct seller from the requirement to file returns electronically. However, Section 42021(d) could be construed to exclude direct sellers from the Collection Act’s new mandatory electronic return filing requirement.

The proposed technical change to subdivision (f) is necessary for the efficient and effective administration of the new prepaid MTS surcharge and local charge.

Administrative Costs: This provision results in no additional BOE administrative costs.

Revenue Impact: This provision does not impact state revenues.

<p>PREPAID MTS SURCHARGE: DEPOSIT AND ALLOCATION <i>Revenue and Taxation Code Sections 42010 and 42023</i></p>
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Existing law. 911 Surcharge Act. Article 2 (commencing with Section 41135) of Chapter 7 provides that all amounts paid monthly to the BOE under to the 911 Surcharge Act are deposited into the State Emergency Telephone Number Account (SETNA) in the General Fund. Article 2 further specifies how moneys in the SETNA must be spent, upon appropriation by the Legislature.

Prepaid MTS Surcharge Collection Act. RTC Section 42023 requires the BOE to deposit all prepaid MTS surcharge revenues into the Prepaid Mobile Telephony Services Surcharge Fund (Prepaid MTS Surcharge Fund). Deposited amounts include all surcharges, interest, penalties, and other amounts collected and paid to the BOE, less payments of refunds and reimbursement to the BOE for administration and collection expenses. All moneys in the Prepaid MTS Surcharge Fund shall be deposited as follows:

- The 911 surcharge portion of the prepaid MTS surcharge will be deposited into the Prepaid MTS 911 Account. All moneys deposited into the Prepaid MTS 911 Account shall be transferred to the SETNA in the General Fund.
- The CPUC surcharges portion of the prepaid MTS surcharge shall be deposited into the Prepaid MTS PUC Account. All moneys deposited in the Prepaid MTS PUC Account shall be allocated and transferred to the respective universal service funds and to the PUC Reimbursement Account.

Proposed Law. This proposal amends RTC Section 42010 to clearly provide that amounts paid by direct sellers shall be deposited into the SETNA. The proposal also amends Section 42023 to make clear how non-direct seller prepaid MTS surcharge collections deposited into the Prepaid MTS 911 Account and transferred to the SETNA, and deposited into the Prepaid MTS PUC Account, are allocated and appropriated.

Commentary. The Prepaid MTS Surcharge Collection Act requires a direct seller to pay the 911 surcharge portion of the MTS surcharge to the BOE pursuant to the 911 Surcharge Act. This requirement implies that the BOE deposit these amounts into the SETNA along with payments under the 911 Surcharge Act. However, the language is not clear.

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Additionally, the Prepaid MTS Surcharge Collection Act requires non-direct seller prepaid MTS surcharge collections ultimately to be transferred from the Prepaid MTS 911 Account to the SETNA, and from the Prepaid MTS PUC Account to the respective universal service funds and PUC reimbursement Account. However, the language does not specify how those amounts transferred to the SETNA are spent, or how moneys transferred from the Prepaid MTS PUC Account are allocated to the respective universal service funds and the PUC Reimbursement Account.

Administrative Costs: This provision results in no additional BOE administrative costs.

Revenue Impact: This provision does not impact state revenues.

PREPAID MTS SURCHARGE AND LOCAL CHARGE: DE MINIMIS SALES THRESHOLD
Revenue and Taxation Code Sections 42010.7 and 42101.7

Existing law. The Collection Acts require a seller to collect a prepaid MTS surcharge and local charge from each prepaid consumer at the time of each retail transaction in this state. The Collection Acts define “seller” to mean a person that sells prepaid mobile telephony service to “a person in a retail transaction.” The term seller *includes a direct seller*. Section 42004 defines a “direct seller” to mean:

- A prepaid MTS provider or service supplier, as defined in Section 41007, that makes a sale of prepaid mobile telephony services directly to a prepaid consumer for any purpose other than resale in the regular course of business. A direct seller includes, but is not limited, to any of the following:
- A telephone corporation, as defined by [PUC Section 234](#).
- An interconnected VoIP service, as defined in [PUC Section 285](#).
- A retailer, as defined by [RTC Section 6203](#), that is a member of the same commonly controlled group, as defined in [RTC Section 25105](#), or that is a member of the same combined reporting group, as defined in [paragraph \(3\) of subdivision \(b\) of Section 25106.5 of Title 18 of the California Code of Regulations](#), as an entity described in subparagraph (A) or (B).

Proposed Law. This bill adds Sections 42010.7 and 42101.7 to the Collection Acts to authorize a seller, other than a direct seller, not to collect the prepaid MTS surcharge and local charge if they have de minimis prepaid MTS sales in the previous calendar year. The bill defines de minimis sales as less than fifteen thousand dollars (\$15,000) in prepaid MTS sales during the previous calendar year.

The bill requires the Department of Finance (DOF) to annually review and adjust that de minimis sales threshold, as necessary to minimize program administration costs and maintain revenues to support program administration, enforcement, and CPUC public purpose programs and rulemaking activities. Adjustments to the de minimis sales threshold become operative on January 1 of the following calendar year.

The bill provides that the de minimis sales threshold shall be based on the aggregate of all sales of prepaid MTS services subject to the local charges at all retail locations operated by the seller and not the individual sales at each retail location operated by the seller.

The de minimis prepaid sales provisions become operative January 1, 2017.

Background. All sellers that make sales of prepaid MTS are required to register with the BOE and report the prepaid MTS surcharge and local charge on those sales, regardless of the amount of sales. Commencing January 1, 2017, sellers, other than direct sellers, with prepaid MTS sales less than \$15,000 annually during the previous calendar year will be closed-out by the BOE. Sellers that make sales of \$15,000 or more during the previous calendar year will be required to collect and remit the prepaid MTS surcharge and local charge.

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Commentary. If the small seller threshold provision is enacted, sellers must still continue to track their sales of prepaid MTS to determine if they fall under the threshold.

Administrative Costs: This provision may result in minimal BOE administrative cost savings beginning with FY 2016-17.

Revenue Impact: This provision may result in a revenue loss due to the de minimis prepaid MTS sales threshold. However, the bill subjects the de minimis sales amount to adjustment by the DOF to minimize program administration costs and maintain revenues to support program administration, enforcement, and CPUC public purpose programs and rulemaking activities.

PREPAID MTS SURCHARGE AND LOCAL CHARGE: SHORT-TERM LOAN FOR ADMINISTRATIVE COSTS
Revenue and Taxation Code Sections 42023.5 and 42104

Existing law. RTC Section 42023 established the Prepaid MTS Surcharge Fund in the State Treasury. The Prepaid MTS Surcharge Fund consists of all surcharges, interest, penalties, and other amounts collected and paid to the BOE, less refund payments and BOE expense reimbursement.

RTC Section 420103 creates the Local Charges for Prepaid MTS Fund in the State Treasury. The local charges consist of all taxes, charges, interest, penalties, and other amounts collected paid to the BOE, less refund payments and BOE expense reimbursement.

Proposed Law. This bill adds Sections 42023.5 and 42104 to the Collection Acts to authorize the Director of Finance to approve a short-term loan for FY 2015-16 from the General Fund to the Prepaid MTS Surcharge Fund and to the Local Charges for Prepaid MTS Fund. The short-term loan intends to provide adequate cash flow for BOE expenses to administer and collect the prepaid MTS surcharge and Local Charge.

The bill provides the following conditions for the short-term loan:

- Any amount loaned is to be repaid in full during the same fiscal year in which the loan was made, except that the repayment may be delayed until a date not more than six months after the date of enactment of the annual Budget Act for the subsequent fiscal year.
- Loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

Commentary. In 2014, AB 1717 (Ch. 885) enacted the Collection Acts to create standardization with respect to the method used to collect communications taxes, fees, surcharges, utility user taxes, and other telecommunication charges from end-use consumers of prepaid MTS.

This bill imposes the MTS surcharge and Local Charge on and after January 1, 2016. Typically, the BOE requires 6 to 8 months to implement a new tax or fee program. However, due to the complexity of the MTS surcharge and local charge programs, the BOE staff noted in the [AB 1717 bill analysis](#) that implementation requires at least 12 months to successfully implement the MTS surcharge and local charge programs. As such, the BOE required funding during FY 2014-15 to allow for the 12-month implementation time. However, AB 1717 did not contain an appropriation to the BOE for FY 2014-15 administrative costs. Without FY 2014-15 funding, the BOE is not able to begin implementation until July 1, 2015 (FY 2015-16) once the BOE receives adequate administrative cost funding through the Budget Act.

Typically, the BOE seeks administrative cost reimbursement from the account or fund into which tax proceeds are deposited. However, AB 1717 created the MTS Surcharge Fund, which lacks funding to reimburse the BOE prior to collection of the tax. Thus, BOE staff suggested that AB 1717 authorize a loan from the General Fund or other eligible fund to the MTS Surcharge Fund. The loan would be repaid from taxes collected.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

Administrative Costs: This provision results in no additional BOE administrative costs.

Revenue Impact: This provision does not impact state revenues.