

[Senate Bill 802](#) (Governance and Finance Committee)

Date: 03/24/15

Programs: Prepaid Mobile Telephony Services

Emergency Telephone Users Surcharge

Sponsor: Board of Equalization

Revenue and Taxation Code Sections 41030, 41032, and 42010

Effective: Immediately upon enactment

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Summary: Among other things, this bill:

- Changes the notification date and method of publicizing the annual Emergency Telephone Users (911) Surcharge Act rate, and
- Makes conforming changes to seller debt provisions under the Prepaid Mobile Telephony Services (MTS) Collection Act.

Purpose: To make housekeeping and technical changes to the 911 Surcharge Act and the Prepaid MTS Surcharge Act.

Fiscal Impact Summary: Does not impact state revenues.

<p style="text-align: center;">Rate Change Notification Deadline and Method: 911 Surcharge Act <i>Revenue and Taxation Code Sections 41030 and 41032</i></p>

Existing Law: Under existing law, the 911 Surcharge Act¹ 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 Office of Emergency Services (OES)² 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 The October 15 notification date remains in effect until January 1, 2020, and as of that date is repealed.³

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.

¹ Part 20 (commencing with Section 41001) of Division 2 of the RTC.

² 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.

³ 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.

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.

Background: In 2014, Assembly Bill 1717 (Ch. 885) enacted the Prepaid Mobile Telephony Services Surcharge Act and Local Prepaid Mobile Telephony Services Collection Act (Collection Acts)⁴ 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 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.

Fiscal Year	OES Notification to the 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 Government Code 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:

- 1. 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>.
- 2. 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.

⁴ Part 21 (commencing with Section 42001) and Part 21.5 (commencing with Section 42100) of Division 2 of the RTC. 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.

Conforming seller debt changes: Prepaid MTS Collection Act*Revenue and Taxation Code Section 42010*

Existing Law: 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 Collection Acts also include necessary provisions that allow for the BOE to efficiently and effectively administer and collect the prepaid MTS surcharge and local charge.

For example, Section 42010(j) provides that the prepaid MTS surcharge that a seller must collect and any amount unreturned to the consumer that is not owed as part of the surcharge, constitutes a seller's debt to the state. Section 42010(j) also contains similar, but not identical language, with respect to the local charge. However, the local charge provision is not consistent with the prepaid MTS surcharge provision, nor does it conform to other user-imposed taxes administered by the BOE (e.g. [RTC Section 41023](#)).

Proposed Law: This bill makes conforming, technical changes to RTC Section 42010(j) and incorporates an urgency clause to allow for its provisions to become operative immediately, thereby allowing the BOE to move forward with its regulatory process for the Collection Acts.

Background: 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: The proposed technical change is necessary for the efficient and effective administration of the new prepaid MTS surcharge and local charge.

Administrative Costs: The bill results in no additional BOE administrative costs.

Revenue Impact: This measure does not impact state revenues.