
UNFINISHED BUSINESS

Bill No: SB 1441
Author: McGuire (D)
Amended: 8/25/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 7-0, 5/11/20
AYES: McGuire, Moorlach, Beall, Hertzberg, Hurtado, Nielsen, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 39-0, 6/11/20
AYES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Jackson, Jones, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Hurtado

ASSEMBLY FLOOR: 73-1, 8/30/20 - See last page for vote

SUBJECT: Local Prepaid Mobile Telephony Services Collection Act

SOURCE: Author

DIGEST: This bill extends until January 1, 2026, the sunset date on the Local Prepaid Mobile Telephony Services Collections Act, and imports into the Act several administrative provisions previously part of the now-repealed Prepaid Mobile Telephony Services Surcharge Collections Act, with some modifications.

Assembly Amendments add a sunset date of January 1, 2026, and make technical changes; the version that the Senate approved earlier this year repealed the sunset entirely.

ANALYSIS:

Existing law:

- 1) Authorizes utility users' taxes (UUTs), which are excise taxes imposed on consumers of utilities by cities and counties on the consumption of utility services, including electricity, gas, water, sewer, telephone, sanitation, and cable television.
- 2) Enacts the Prepaid Mobile Telephony Services Surcharge Collections Act, which required sellers of prepaid wireless telecommunications services to collect a fee measured as a percentage of the sales price, known as the Mobile Telephony Services (MTS) fee (AB 1717, Perea, Chapter 885, Statutes of 2014), comprised of two parts:
 - a) The prepaid MTS surcharge, which adds together state fees charged by the California Public Utilities Commission (CPUC) to fund the state's universal services fund among other CPUC charges, plus surcharges on telecommunications services determined by the Office of Emergency Services (OES) to fund the state's 911 emergency response system.
 - b) The Local Prepaid Mobile Telephony Services Collection Act, which created the second part of the MTS fee – the local charge – which adds together local UUTs and any charges to fund local 911 emergency fees that apply in the jurisdiction where the customer purchases the prepaid MTS services.
- 3) Allows sellers of prepaid wireless services to choose to pay the actual local UUT rate, or the one set by the Act.
- 4) Provides that the MTS fee was the exclusive method for collecting UUTs, local 911 charges, or any other charge on prepaid wireless, and defines the scope of any tax or charge.
- 5) Commences collection of the MTS fee on January 1, 2016, directing sellers of prepaid wireless services to remit funds to the California Department of Tax and Fee Administration (CDTFA), which in turn distributes fee proceeds to the appropriate state or local agency.
- 6) Exempts sellers with less than \$15,000 in sales in the previous calendar year from the requirement to collect the MTS fee, and directs CDTFA to adjust the \$15,000 threshold for inflation annually.

- 7) Provides vendor compensation for indirect sellers, or those retailers who sell prepaid services but are not mobile telephony service or Voice over Internet Protocol providers, equal to 2% of the fees collected.
- 8) Sunsets the Prepaid Mobile Telephony Services Surcharge Collections Act on January 1, 2020.
- 9) Replaces the previous state 911 surcharge with a new monthly charge to fund the state's 911 emergency response system (SB 96, Committee on Budget and Fiscal Review, Chapter 54, Statutes of 2019), effective on January 1, 2020, which:
 - a) Maintains OES's role determining the amount of the charge.
 - b) Changes the measure of the charge to up to \$0.80 per access line per month, instead of the previous cap of 1% of charges for services.
 - c) Applies to sellers of prepaid MTS at the rate of up to \$0.80 per retail transaction in California, paid by the consumer at the time of purchase.
- 10) Extends the Local Prepaid Mobile Telephony Services Collection Act until January 1, 2021 (SB 344, McGuire, Chapter 642, Statutes of 2019), with some modifications.

This bill:

- 1) Extends the sunset date on the Local Prepaid Mobile Telephony Services Surcharge Collections Act from January 1, 2021, to January 1, 2026.
- 2) Adds into the Local Act several provisions of law that were previously part of the Prepaid Mobile Telephony Services Surcharge Collections Act, with some modifications, including:
 - a) Deleting references requiring sellers to collect the local charge from the prepaid consumer at the same time and in the same manner as the state charge was collected, as that law read on January 1, 2017, instead imposing the collection requirement at the time of sale.
 - b) Requiring CDTFA to post the individual rates for each local charge on its Web site, and provide that sellers may rely on the information posted.
 - c) Allowing sellers that are not direct sellers to retain an amount equal to 2% of the amounts that are collected.

- d) Requiring direct sellers to collect and remit local charges to the local agency.
- e) Specifying local charges must be separately stated on a receipt, invoice or similar document or disclosed electronically to the prepaid consumer.
- f) Specifying amounts collected are debts jointly to the state and the respective local agency.
- g) Providing excess fees collected may be refunded to prepaid consumers.
- h) Stating prepaid consumers are liable for the local charge unless they make a payment to sellers.
- i) Allowing a credit against local charges when the prepaid consumer paid local charges to another state.
- j) Relieving a seller's liability to remit local charges from worthless accounts that have been charged off for income tax purposes, and allowing sellers to deduct charged off amounts from worthless accounts from their return, but requiring sellers to report and remit any charged off amounts collected on the first return filed if they subsequently collect.
- k) Providing that a retail transaction occurs in this state when the prepaid consumer makes a purchase in person at a business location in the state, referred to as a point-of-sale transaction, or the prepaid consumer's address is in the state, called a known-address transaction. Defining a known-address transaction as one that occurs when:
 - i) The retail sale involves shipping of an item to be delivered to, or picked up by, the prepaid consumer at a location in the state.
 - ii) The prepaid consumer's address is known by the seller to be in the state, including if the seller's records maintained in the ordinary course of business indicate that the prepaid consumer's address is in the state and the records are not made or kept in bad faith.
 - iii) The prepaid consumer provides an address during consummation of the retail transaction that is in the state, including an address provided with respect to the payment instrument, if no other address is available and the address is not given in bad faith.

- iv) The mobile telephone number is associated with a location in this state and the address is not otherwise available.
- l) Clarifying that the local charge applies to bundled transactions when:
 - i) Prepaid MTS is sold in combination with mobile data services or any other services or products that are not subject to the local charges for a single price, in which case local charges apply to the entire price unless the seller can identify the mobile data services and other services or products from its books and records kept in the ordinary course of business.
 - ii) Prepaid MTS is sold with a device such as a telephone, for a single, nonitemized price, in which case local charges apply to the entire nonitemized price, except if the purchase price for the cellular telephone component of the bundled charge is disclosed to the prepaid consumer on a receipt, invoice, or other written or electronic documentation, in which case the local charges the separately stated price of the cellular telephone can be excluded.
 - iii) A minimal amount (less than ten minutes or five dollars) of prepaid mobile telephony service is sold for a single, nonitemized price with a mobile telephony service communications device, in which case local charges do not apply to the transaction.
- m) Specifying that CDTFA must collect and administer the local charges pursuant to the Fee Collection Procedures Law.
- n) Requiring persons that remit sales and use taxes by electronic funds transfer to do so for local charges.
- o) Allowing CDTFA to prescribe emergency regulations to implement the bill.
- p) Requiring CDTFA to establish procedures to be used by sellers to document non-retail sales.
- q) Requiring CDTFA to establish remittance schedules utilizing existing methods for the Sales and Use Tax.
- r) Specifying payments and returns are due on a quarterly basis.
- s) Requiring sellers to register with CDTFA.

- 3) Defines several terms, and makes technical and conforming changes, including updating references from “board” to “department” throughout, as the Board of Equalization, CDTFA’s predecessor, administered the Prepaid MTS Surcharge when the Legislature enacted AB 1717.

Background

In jurisdictions that impose a UUT, a utility company generally collects the tax through the bills it sends to utility customers, and remits the revenues to the local government that imposed the tax. Although a city or county can impose a UUT as a special tax, nearly all UUTs are imposed as general taxes. As of January 1, 2017, 156 cities, three counties (Alameda, Los Angeles, and Sacramento), and the City and County of San Francisco impose a UUT, which results in annual revenues of approximately \$2 billion statewide. Most UUTs apply to wireless telephone services, with the tax measured as a percentage of the carrier’s charges to the customer.

Wireless telecommunications consumers who have contracts with carriers to provide wireless telephony services pay UUTs as part of their monthly bills, and the carrier remits these funds to the local jurisdiction where the consumer primarily uses the phone, if that jurisdiction imposes a UUT. However, prepaid wireless customers who purchase services from carriers in the form of prepaid cards do not have a similar ongoing contractual relationship with a carrier. Prior to AB 1717, collecting UUTs from prepaid customers was difficult; customers usually purchase prepaid services from third party retail outlets, and pay in full before the consumer uses the service, so no mechanism exists to collect ongoing charges from prepaid customers.

In 2017, mobile telecommunications provider MetroPCS brought an action in federal court against CPUC contending that its calculation of its portion of the MTS fee impermissibly assesses interstate revenues in conflict with federal law. On November 15, 2018, the United States District Court Northern District of California declared that the Prepaid Collection Act and the CPUC resolutions implementing calculation of its part of the fee were in conflict with federal law, and therefore preempted and unconstitutional (*MetroPCS California, LLC v. Michael Picker et al*, 348, F. Supp. 3d. 948.) The decision enjoined state agencies from enforcing the Prepaid Mobile Telephony Services Surcharge Collections Act. As a result, on December 14, 2018, CDTFA notified prepaid MTS sellers to stop collecting the prepaid MTS surcharge.

However, the decision did not affect CDTFA’s administration of the Local Act, which was not at issue in the case. CDTFA distributes MTS Fee proceeds to

approximately 107 local agencies, which will end on January 1, 2020, unless extended by the Legislature.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, this bill results in “additional costs for the California Department of Tax and Fee Administration (CDTFA) of \$305,000 in 2020-21 and \$1.9 million each year thereafter. The Local MTS Act reimburses CDTFA for any administrative expense related to administering the program. (Local Charges for Prepaid Mobile Telephony Services Fund).”

SUPPORT: (Verified 8/28/20)

State Treasurer Fiona Ma
AT&T
California Retailers Association
California State Association of Counties
City of Bellflower
City of Burbank
City of Culver City
City of Downey
City of El Segundo
City of Glendale
City of Hermosa Beach
City of Lakewood
City of Modesto
City of Redwood City
City of Sacramento
City of San Leandro
City of San Luis Obispo
City of Santa Ana
City of Santa Monica
City of Stockton
City of Torrance
City of Thousand Oaks
CTIA – the Wireless Association
League of California Cities
MuniServices
Sprint
T-Mobile

Tracfone
Verizon

OPPOSITION: (Verified 8/28/20)

None received

ARGUMENTS IN SUPPORT: According to the author, “Due to the unprecedented coronavirus pandemic, cities and counties are facing crippling budget deficits for years to come. SB 1441 will preserve local jurisdictions ability to collect Utility User Taxes (UUTs) from retail sales of prepaid wireless telecommunication products and services. Over 100 cities and counties rely on this locally imposed, voter-approved revenue stream to provide important services like public safety and road repair. Without SB 1441, these local governments will lose their ability to collect this revenue at the end of the year. As we face disastrous economic uncertainty, SB 1441 is crucial to ensuring locals maintain the ability to collect on revenue they have relied on since 2016.”

ASSEMBLY FLOOR: 73-1, 8/30/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Waldron, Weber, Wood, Rendon

NOES: Brough

NO VOTE RECORDED: Choi, Eggman, Frazier, Voepel, Wicks

Prepared by: Colin Grinnell / GOV. & F. / (916) 651-4119
8/31/20 0:46:57

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