

The question arises as to what the Federal Communications Commission considers 911 fund diversions for purposes of reporting to Congress. Does redirection by appropriation by a State Legislative body constitute diversion for purposes of reporting to congress or is reportable diversion restricted to funds diverted by operating agencies?

The example here is the State of Washington where in 1992 the voters of the state approved a tax on phone lines, since extended to wireless and VoIP services, by the overwhelming approval of Referendum 42 that read: "Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines?"[1] The associated statutory provisions that enable that legislation, as modified to include wireless, include the language: "The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise taxes imposed by RCW 82.14B.030 must be deposited into the account. Moneys in the account must be used only to support the statewide coordination and management of the enhanced 911 system, for the implementation of wireless enhanced 911 statewide, for the modernization of enhanced 911 emergency communications systems statewide, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies." [2] The Washington State Legislature in approving budgets modified that statute by adding the following provision: "For the 2013-2015 and the 2015-2017 fiscal biennia, the account may be used for a criminal history system upgrade in the Washington state patrol and for activities and programs in the military department." [3] This follows previous legislative budget appropriations that included funding of radio systems for the department of corrections. A criminal history system would not appear at face value to be part of the 911 response system. Although the state's 911 system management is within the military department the provision as written permits the expedient utilization of the 911 fund within that department, which is implicitly supported by a simultaneous reduction in general fund appropriations to the military department by the legislature.

The Commission's annual report does not list Washington State as having diverted 911 funds. This is undoubtedly due to Washington State not noting in their submission to the Commission what would appear to be a diversion of 911 funds based on the purpose as approved by the voters of the state. If legislatively approved redirection of funds explicitly collected for support of 911 operations is not considered diversion the by the Commission that should be made abundantly clear in the report to Congress. If legislative redirection is considered diversion that should be made clear to the reporting entities, and in this case the report should be appropriately corrected.

1 Laws of the State of Washington 1991 c 54 ? 17.

2 Revised Code of Washington 38.52.540

3 Laws of the State of Washington 2015 3rd sp.s. c 4 ? 949