
SENATE BILL No. 180

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8-16.5.

Synopsis: Enhanced wireless emergency telephone service. Reduces membership on the wireless enhanced 911 advisory board from 11 to seven. Allows current members to complete their terms. Makes the treasurer of state a voting member of the board. Eliminates term limits for board members. Eliminates the requirement that the board must use a third party audit in determining whether to adjust the wireless emergency enhanced 911 fee. Specifies procedures to be used by commercial mobile radio service (CMRS) providers in collecting and remitting the fee from prepaid subscribers. Specifies that the part of the fee to be used to implement phase two of a specified Federal Communications (FCC) order must be used to reimburse CMRS providers and public safety answering points (PSAPs) for their costs in implementing the order. Allows the board to invest the fees collected and to use the proceeds to reimburse CMRS providers and PSAPs. Provides that monthly distributions to reimburse PSAPs for costs in complying with the FCC order must be distributed to each county with eligible PSAPs based on the county's percentage of the state's population. Provides that the contents of an invoice submitted by a CMRS provider to the board must be sworn to and affirmed under penalty of perjury. Repeals a provision establishing five wireless board regions.

Effective: July 1, 2002.

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January 7, 2002, read first time and referred to Committee on Public Policy.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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SENATE BILL No. 180



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-8-16.5-5 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. As used in this
- 3 chapter, "CMRS" refers to the commercial mobile radio service (as
- 4 defined by 47 U.S.C. 332(d)(1)). The term includes the following:
- 5 (1) Services commonly referred to as wireless.
- 6 (2) Services provided by a wireless real time two-way voice
- 7 communication device, including radio-telephone
- 8 communications used in:
- 9 (A) cellular telephone service;
- 10 (B) personal communications service; or
- 11 (C) the functional or competitive equivalent of a
- 12 radio-telephone communications line used in:
- 13 (i) cellular telephone service;
- 14 (ii) a personal communications service; or
- 15 (iii) a network radio access line.
- 16 **(3) Any other wireless service that provides the user with**
- 17 **direct access to a PSAP through the placement of a 911 call.**



1 SECTION 2. IC 36-8-16.5-14 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. As used in this
 3 chapter, "subscriber" refers to a **standard** subscriber ~~for or a prepaid~~
 4 **subscriber of** CMRS service.

5 SECTION 3. IC 36-8-16.5-14.5 IS ADDED TO THE INDIANA
 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2002]: **Sec. 14.5. As used in this chapter,**
 8 **"prepaid subscriber" refers to a CMRS subscriber who pays in full**
 9 **prospectively for the service and is issued an Indiana telephone**
 10 **number or an Indiana identification number for the service.**

11 SECTION 4. IC 36-8-16.5-14.7 IS ADDED TO THE INDIANA
 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2002]: **Sec. 14.7. As used in this chapter,**
 14 **"standard subscriber" refers to a CMRS subscriber who pays**
 15 **retrospectively for the service and has an Indiana billing address**
 16 **for the service.**

17 SECTION 5. IC 36-8-16.5-18 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) The wireless
 19 enhanced 911 advisory board is established. The board is a body
 20 corporate and politic, and though it is separate from the state, the
 21 exercise by the board of its powers constitutes an essential
 22 governmental function.

23 (b) The following recommendations must be made to the governor
 24 concerning the membership of the board:

25 (1) The executive committees of NENA and APCO shall jointly
 26 recommend ~~one (1) individual from each of the five (5) wireless~~
 27 ~~board regions established by section 17 of this chapter: three (3)~~
 28 **individuals.**

29 (2) The CMRS providers authorized to provide CMRS in Indiana
 30 shall jointly recommend ~~five (5) three (3)~~ individuals.

31 (c) The board consists of the following ~~eleven (11) seven (7)~~
 32 members:

33 (1) The treasurer of state or the treasurer's designee. The treasurer
 34 of state or the treasurer's designee is chairperson of the board for
 35 a term concurrent with the treasurer of state's term of office.
 36 However, the treasurer of state's designee serves at the pleasure
 37 of the treasurer of state. ~~The treasurer of state or the treasurer's~~
 38 ~~designee may vote on an issue before the board only to break a tie~~
 39 ~~vote.~~

40 (2) ~~Five (5) Three (3)~~ members for a term of three (3) years who
 41 are appointed by the governor after the governor considers the
 42 recommendations of the executive committees of NENA and

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1 APCO that are submitted under subsection (b)(1).

2 (3) ~~Five (5)~~ **Three (3)** members for a term of three (3) years who
3 are appointed by the governor after considering the
4 recommendations of the CMRS providers that are submitted
5 under subsection (b)(2).

6 **(d)** A member's position may be filled by the member's designee
7 who serves at the pleasure of the member.

8 ~~(d)~~ **(e)** A vacancy on the board is filled for the vacating member's
9 unexpired term in the same manner as the original appointment.

10 ~~(e) A member may not serve more than two (2) consecutive three~~
11 ~~(3) year terms on the board.~~

12 (f) Each member appointed under subsection (c)(2) or (c)(3) shall
13 submit the name of a designee to the board. The board shall maintain
14 a list of approved designees. A member appointed under subsection
15 (c)(2) or (c)(3) may appoint a listed designee to fill the member's
16 position **under subsection (d) or to act on behalf of the member at**
17 **a meeting of the board.** The designee serves at the pleasure of the
18 appointing member.

19 (g) A member may vote by proxy through another member.

20 SECTION 6. IC 36-8-16.5-19, AS AMENDED BY P.L.116-2000,
21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2002]: Sec. 19. A majority of the members of the board
23 constitutes a quorum for purposes of taking action. Except as provided
24 in section 39(b) of this chapter, the board may take action approved by
25 a majority of the members of the board **present at a meeting of the**
26 **board.**

27 SECTION 7. IC 36-8-16.5-24 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 24. The board shall
29 select a third party to audit the fund every two (2) years to determine
30 whether the fund is being managed in accordance with this chapter.
31 ~~The third party auditor shall provide the audit to the board to use in~~
32 ~~determining whether to adjust the emergency wireless 911 fee under~~
33 ~~section 26 of this chapter.~~ The board shall pay for an audit by the third
34 party auditor as an administrative cost of the board. ~~If the third party~~
35 ~~auditor finds that the wireless enhanced 911 fee structure does not~~
36 ~~reflect the actual costs required by the PSAPs and CMRS providers; the~~
37 ~~board shall reduce the fee to reflect the actual costs required by the~~
38 ~~PSAPs and CMRS providers.~~

39 SECTION 8. IC 36-8-16.5-25 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. Except as provided
41 in section 34 of this chapter, the board shall assess a monthly
42 ~~emergency wireless~~ **emergency** enhanced 911 fee on each CMRS

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1 mobile telephone number that has a billing address in Indiana-
2 subscriber.

3 SECTION 9. IC 36-8-16.5-26 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. The board may
5 adjust the ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee that is
6 assessed under section 25 of this chapter. The board shall assess the
7 fees at rates that ensure full recovery over a reasonable period of time
8 of costs incurred by CMRS providers and PSAPs to develop and
9 maintain an enhanced wireless 911 system. The fees may not:

- 10 (1) be raised or lowered more than one (1) time in a calendar year;
11 (2) be raised more than seven cents (\$0.07) by an adjustment; or
12 (3) exceed one dollar (\$1) per month for each telephone number.

13 SECTION 10. IC 36-8-16.5-30 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 30. Except as provided
15 in section 34 of this chapter, each CMRS provider ~~as part of its~~
16 ~~monthly billing process~~, shall bill each CMRS mobile telephone
17 number for collect the ~~emergency~~ wireless ~~emergency~~ enhanced 911
18 fee ~~The as follows~~:

19 (1) A CMRS provider shall collect the fee from each standard
20 subscriber as part of its normal monthly billing process and
21 may list the fee as a separate line item on each bill. If a CMRS
22 provider receives a partial payment for a monthly bill from a
23 CMRS **standard** subscriber, the CMRS provider shall apply the
24 payment against the amount the CMRS **standard** subscriber owes
25 to the CMRS provider before applying the payment against the
26 fee.

27 (2) A CMRS provider shall collect and remit to the board
28 under section 36 of this chapter fees from its prepaid
29 subscribers in an amount equal to the fee amount multiplied
30 by the number of active prepaid subscriber accounts on the
31 last day of each calendar month.

32 SECTION 11. IC 36-8-16.5-31 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. A CMRS provider,
34 as part of its monthly billing process, may not pro-rate the monthly
35 ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee collected from the
36 subscriber.

37 SECTION 12. IC 36-8-16.5-32 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. A CMRS provider
39 is not required to take legal action to enforce the collection of the
40 ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee for which a
41 subscriber is billed. However, a collection action may be initiated by
42 the board. A court finding for the board in the action may award

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1 reasonable costs and attorney's fees associated with the collection
2 action.

3 SECTION 13. IC 36-8-16.5-33 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. The wireless
5 **emergency** enhanced 911 fee is exempt from state and local taxation.

6 SECTION 14. IC 36-8-16.5-34 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 34. A CMRS number
8 is exempt from the **emergency** wireless **emergency** enhanced 911 fee
9 if the subscriber is any of the following:

10 (1) The federal government or an agency of the federal
11 government.

12 (2) The state or an agency or instrumentality of the state.

13 (3) A political subdivision (as defined in IC 36-1-2-13) or an
14 agency of a political subdivision.

15 SECTION 15. IC 36-8-16.5-35 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 35. A CMRS provider
17 may keep two percent (2%) of the **emergency** wireless **emergency**
18 enhanced 911 fee collected each month from each subscriber for the
19 purpose of defraying the administrative costs of collecting the fee.

20 SECTION 16. IC 36-8-16.5-38 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 38. To recover costs
22 under section 37 of this chapter, a CMRS provider must submit a full,
23 sworn, true, complete, and detailed cost recovery plan. The board must
24 approve the plan before the CMRS provider may recover costs from the
25 fund under section 37 of this chapter. ~~The board may not approve an~~
26 ~~invoice if:~~

27 ~~(1) reimbursement of a cost described in the invoice is not related~~
28 ~~to compliance with the requirements of the FCC order; or~~

29 ~~(2) payment of the invoice would result in payment of more than~~
30 ~~one hundred twenty-five percent (125%) of the total amount~~
31 ~~contributed to the fund by a CMRS provider;~~

32 ~~unless the board approved the cost before it was incurred by the CMRS~~
33 ~~provider:~~

34 SECTION 17. IC 36-8-16.5-39, AS AMENDED BY P.L.116-2000,
35 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2002]: Sec. 39. (a) Except as provided by section 26 of this
37 chapter and subsection (b), the fund must be managed in the following
38 manner:

39 (1) Three cents (\$0.03) of the **emergency** wireless **emergency** 911
40 fee collected from each subscriber must be **held deposited** in an
41 **interest bearing** escrow account to be used **for to reimburse**
42 **CMRS providers and PSAPs for costs associated with**

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1 implementation of phase two (2) of the FCC order. **The board**
 2 **may invest money in the account in the manner prescribed by**
 3 **section 23 of this chapter and may use the proceeds of the**
 4 **investments to reimburse CMRS providers and PSAPs under**
 5 **this subdivision.** The board shall reevaluate the fees placed into
 6 escrow not later than May 1, 2000. The board shall determine if
 7 the fee should be reduced, remain the same, or be increased based
 8 on the latest information available concerning the costs associated
 9 with phase two (2) of the FCC order.

10 (2) At least twenty-five cents (\$0.25) of the ~~emergency~~ wireless
 11 **emergency 911 fee** collected from each subscriber must be ~~held~~
 12 **deposited in an escrow account** and used to reimburse CMRS
 13 providers for the actual costs incurred by the CMRS providers in
 14 complying with the wireless 911 requirements established by the
 15 FCC order and rules that are adopted by the FCC under the FCC
 16 order, including costs and expenses incurred in designing,
 17 upgrading, purchasing, leasing, programming, installing, testing,
 18 or maintaining all necessary data, hardware, and software
 19 required to provide service as well as the costs of operating the
 20 service. **The board may invest money in the account in the**
 21 **manner prescribed by section 23 of this chapter and may use**
 22 **the proceeds of the investments to reimburse CMRS providers**
 23 **under this subdivision.** Except as provided by section 38 of this
 24 chapter, the ~~carrier~~ **CMRS provider** may only request funds for
 25 true cost recovery. The board may increase the amount held in
 26 escrow under this subdivision not more than one (1) time a
 27 calendar year. If the board adjusts the ~~emergency~~ wireless
 28 **emergency 911 fee** under section 26 of this chapter within a
 29 calendar year, an adjustment to the amount held in escrow under
 30 this subdivision for the calendar year must be made at that time.

31 (3) Two percent (2%) of the ~~emergency~~ wireless **emergency 911**
 32 **fee** collected from each subscriber may be used by the board to
 33 recover the board's expenses in administering this chapter.
 34 However, the board may increase this percentage at the time the
 35 board may adjust the monthly fee assessed against each ~~CMRS~~
 36 **mobile telephone number subscriber** to allow for full recovery of
 37 administration expenses.

38 (4) ~~Money remaining in the fund~~ **The remainder of the wireless**
 39 **emergency 911 fee collected from each subscriber** must be held
 40 in escrow and used for monthly distributions to eligible PSAPs
 41 that provide wireless enhanced 911 service and that have
 42 submitted written notice to the board. The board shall maintain a

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list of eligible PSAPs. The fund held in escrow under this subdivision must be distributed in the following manner:

(A) ~~Ninety-eight percent (98%) must be distributed among~~
 The board shall distribute on a monthly basis to each county containing one (1) or more eligible PSAPs, as identified by the county in the notice required under section 40 of this chapter, a part of the remainder based upon the county's percentage of the state's population (as reported in the most recent official United States census). ~~served by each PSAP. A county must use a distribution received under this clause to reimburse PSAPs that:~~

(i) are identified by the county under section 40 of this chapter as eligible for distributions; and

(ii) accept wireless enhanced 911 service;

for actual costs incurred by the PSAPs in complying with the wireless enhanced 911 requirements established by the FCC order and rules.

(B) ~~Two percent (2%)~~ The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed among the eligible PSAPs under a formula:

(i) established by the board; and

(ii) based on a PSAP's ~~CMRS 911 call volume~~; in equal shares between the escrow accounts established under subdivisions (1) and (2).

(b) Notwithstanding the requirements described in subsection (a), the board may transfer money between and among the accounts in subsection (a) in accordance with the following procedures:

(1) ~~A transfer must be approved by the affirmative vote of at least eight (8) board members. For purposes of acting under this subsection, the board must have a quorum consisting of at least one (1) member appointed under section 18(c)(2) of this section and at least one (1) member appointed under section 18(c)(3) of this section.~~

(2) A transfer under this subsection must be approved by the affirmative vote of:

(A) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(2) of this chapter; and

(B) at least fifty percent (50%) of the members present at a duly called meeting of the board who are appointed under section 18(c)(3) of this chapter.

(3) The board may make transfers only one (1) time during a

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1 calendar year.

2 ~~(3)~~ **(4)** The board may not make a transfer that:

3 (A) impairs cost recovery by CMRS providers or PSAPs; or

4 (B) impairs the ability of the board to fulfill its management
5 and administrative obligations described in this chapter.

6 SECTION 18. IC 36-8-16.5-40 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 40. To be eligible to
8 receive distributions from the fund under section 39 of this chapter, a
9 PSAP must comply with the wireless enhanced 911 requirements
10 established by the FCC order and rules. ~~adopted by the FCC under the~~
11 ~~FCC order. Distribution~~ **A county containing one (1) or more eligible**
12 **PSAPs shall submit a written notice to the board that identifies**
13 **each PSAP that complies with the FCC order and rules.**
14 **Distributions under section 39 of this chapter to a PSAP county**
15 **containing one (1) or more eligible PSAPs must begin in the first full**
16 **month after the PSAP becomes eligible. board receives the county's**
17 **written notice under this section. The county treasurer shall**
18 **deposit the distributions as prescribed in section 43 of this chapter.**

19 SECTION 19. IC 36-8-16.5-42 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. (a) A CMRS
21 provider shall submit to the board sworn invoices related to a request
22 for reimbursement under section 39 of this chapter. **An invoice**
23 **submitted under this section must contain language swearing or**
24 **affirming, under the penalty of perjury, that the representations**
25 **made in the invoice are accurate to the best of the signer's**
26 **knowledge. The signer must be:**

27 **(1) an employee or officer of the CMRS provider submitting**
28 **the invoice; and**

29 **(2) designated by the CMRS provider to sign on its behalf and**
30 **bind the CMRS provider to the representations made.**

31 The board may not approve an invoice ~~for~~ **submitted under this**
32 **section if reimbursement of costs that are a cost described in the**
33 **invoice is not related to compliance with the wireless enhanced 911**
34 **service requirements established by of the FCC order and the rules**
35 **adopted by the FCC under the FCC order.**

36 (b) If:

37 (1) the board receives a written complaint alleging that a CMRS
38 provider has used money received under this chapter in a manner
39 that is inconsistent with this chapter; and

40 (2) a majority of the board votes to conduct an audit of the CMRS
41 provider;

42 the board may contract with a third party auditor to audit the CMRS

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1 provider to determine whether the CMRS provider has used money
2 received under this chapter in a manner consistent with this chapter.

3 SECTION 20. IC 36-8-16.5-43 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 43. The distribution of
5 ~~emergency~~ wireless ~~emergency~~ enhanced 911 funds ~~to the PSAPs~~ by
6 the board **for cost recovery by PSAPs under section 39 of this**
7 **chapter** must be deposited by ~~a the county treasurer or a municipal~~
8 ~~fiscal officer~~ in a separate fund set aside for the purposes allowed by
9 section 41 of this chapter. The fund must be known as the _____
10 (insert name of county) ~~or municipality~~ **wireless** emergency telephone
11 system fund. The county treasurer ~~or the municipal fiscal officer~~ may
12 invest money in the fund in the same manner that other money of the
13 county ~~or municipality~~ may be invested, but income earned from the
14 investment must be deposited in the fund set aside under this section.

15 SECTION 21. IC 36-8-16.5-46 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 46. Notwithstanding
17 any other law, the board, a PSAP, political subdivision, CMRS
18 provider, local exchange company, or an employee, director, officer, or
19 agent of a PSAP, political subdivision, CMRS provider, or local
20 exchange company, **or a member of the board or the board chair, or**
21 **an employee, an agent, or a representative of the board chair** is not
22 liable for damages in a civil action or subject to criminal prosecution
23 resulting from death, injury, or loss to persons or property incurred by
24 any person in connection with establishing, developing, implementing,
25 maintaining, operating, and providing **enhanced** wireless 911 service
26 in compliance with the requirements established by the FCC order and
27 rules adopted under the FCC order, except in the case of willful or
28 wanton misconduct.

29 SECTION 22. IC 36-8-16.5-17 IS REPEALED [EFFECTIVE JULY
30 1, 2002].

31 SECTION 23. [EFFECTIVE JULY 1, 2002] **Notwithstanding**
32 **IC 36-8-16.5-18, as amended by this act, a member appointed to the**
33 **wireless enhanced 911 advisory board under IC 36-8-16.5-18(c)(2),**
34 **before its amendment by this act, or under IC 36-8-16.5-18(c)(3),**
35 **before its amendment by this act, shall continue to serve on the**
36 **board until the expiration of the member's term. The governor**
37 **may not make a reappointment to any vacancy in the board under**
38 **IC 36-8-16.5-18(c)(2), as amended by this act, or under**
39 **IC 36-8-16.5-18(c)(3), as amended by this act, until the total**
40 **number of members of the board complies with the total number**
41 **of members of the board required by IC 36-8-16.5-18, as amended**
42 **by this act.**



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