



February 1, 2002

SENATE BILL No. 180

DIGEST OF SB 180 (Updated January 29, 2002 2:10 PM - DI 71)

Citations Affected: IC 36-8; noncode.

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 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.
January 31, 2002, amended, reported favorably — Do Pass.

SB 180—LS 6762/DI 101+



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February 1, 2002

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.**

SB 180—LS 6762/DI 101+



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

18 SECTION 11. IC 36-8-16.5-32 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 32. A CMRS provider
20 is not required to take legal action to enforce the collection of the
21 ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee for which a
22 subscriber is billed. However, a collection action may be initiated by
23 the board. A court finding for the board in the action may award
24 reasonable costs and attorney's fees associated with the collection
25 action.

26 SECTION 12. IC 36-8-16.5-33 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. The wireless
28 ~~emergency~~ enhanced 911 fee is exempt from state and local taxation.

29 SECTION 13. IC 36-8-16.5-34 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 34. A CMRS number
31 is exempt from the ~~emergency~~ wireless ~~emergency~~ enhanced 911 fee
32 if the subscriber is any of the following:

- 33 (1) The federal government or an agency of the federal
34 government.
35 (2) The state or an agency or instrumentality of the state.
36 (3) A political subdivision (as defined in IC 36-1-2-13) or an
37 agency of a political subdivision.

38 SECTION 14. IC 36-8-16.5-35 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 35. A CMRS provider
40 may keep two percent (2%) of the ~~emergency~~ wireless ~~emergency~~
41 enhanced 911 fee collected each month from each subscriber for the
42 purpose of defraying the administrative costs of collecting the fee.

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1 SECTION 15. IC 36-8-16.5-38 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 38. To recover costs
 3 under section 37 of this chapter, a CMRS provider must submit a full,
 4 sworn, true, complete, and detailed cost recovery plan. The board must
 5 approve the plan before the CMRS provider may recover costs from the
 6 fund under section 37 of this chapter. ~~The board may not approve an~~
 7 ~~invoice if:~~

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

10 (2) payment of the invoice would result in payment of more than
 11 one hundred twenty-five percent (+25%) of the total amount
 12 contributed to the fund by a CMRS provider;

13 unless the board approved the cost before it was incurred by the CMRS
 14 provider.

15 SECTION 16. IC 36-8-16.5-39, AS AMENDED BY P.L. 116-2000,
 16 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2002]: Sec. 39. (a) Except as provided by section 26 of this
 18 chapter and subsection (b), the fund must be managed in the following
 19 manner:

20 (1) Three cents (\$0.03) of the ~~emergency~~ wireless **emergency** 911
 21 fee collected from each subscriber must be ~~held deposited~~ in an
 22 ~~interest bearing~~ escrow account to be used ~~for to reimburse~~
 23 **CMRS providers and PSAPs for costs associated with**
 24 **implementation of phase two (2) of the FCC order. The board**
 25 **may invest money in the account in the manner prescribed by**
 26 **section 23 of this chapter and may use the proceeds of the**
 27 **investments to reimburse CMRS providers and PSAPs under**
 28 **this subdivision.** The board shall reevaluate the fees placed into
 29 escrow not later than May 1, 2000. The board shall determine if
 30 the fee should be reduced, remain the same, or be increased based
 31 on the latest information available concerning the costs associated
 32 with phase two (2) of the FCC order.

33 (2) At least twenty-five cents (\$0.25) of the ~~emergency~~ wireless
 34 **emergency** 911 fee collected from each subscriber must be ~~held~~
 35 **deposited in an** escrow **account** and used to reimburse CMRS
 36 providers for the actual costs incurred by the CMRS providers in
 37 complying with the wireless 911 requirements established by the
 38 FCC order and rules that are adopted by the FCC under the FCC
 39 order, including costs and expenses incurred in designing,
 40 upgrading, purchasing, leasing, programming, installing, testing,
 41 or maintaining all necessary data, hardware, and software
 42 required to provide service as well as the costs of operating the



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1 service. **The board may invest money in the account in the**
 2 **manner prescribed by section 23 of this chapter and may use**
 3 **the proceeds of the investments to reimburse CMRS providers**
 4 **under this subdivision.** Except as provided by section 38 of this
 5 chapter, the ~~carrier~~ **CMRS provider** may only request funds for
 6 true cost recovery. The board may increase the amount held in
 7 escrow under this subdivision not more than one (1) time a
 8 calendar year. If the board adjusts the ~~emergency~~ wireless
 9 **emergency 911 fee** under section 26 of this chapter within a
 10 calendar year, an adjustment to the amount held in escrow under
 11 this subdivision for the calendar year must be made at that time.

12 (3) Two percent (2%) of the ~~emergency~~ wireless **emergency 911**
 13 **fee** collected from each subscriber may be used by the board to
 14 recover the board's expenses in administering this chapter.
 15 However, the board may increase this percentage at the time the
 16 board may adjust the monthly fee assessed against each ~~CMRS~~
 17 **mobile telephone number subscriber** to allow for full recovery of
 18 administration expenses.

19 (4) ~~Money remaining in the fund~~ **The remainder of the wireless**
 20 **emergency 911 fee collected from each subscriber** must be held
 21 in escrow and used for monthly distributions to eligible PSAPs
 22 that provide wireless enhanced 911 service and that have
 23 submitted written notice to the board. The board shall maintain a
 24 list of eligible PSAPs. The fund held in escrow under this
 25 subdivision must be distributed in the following manner:

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

- 35 (i) **are identified by the county under section 40 of this**
 36 **chapter as eligible for distributions; and**
 37 (ii) **accept wireless enhanced 911 service;**

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

41 (B) ~~Two percent (2%)~~ **The amount of the fee remaining, if**
 42 **any, after the distributions required under clause (A) must**

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1 be distributed among the eligible PSAPs under a formula:

2 (i) established by the board; and

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

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

9 (1) ~~A transfer must be approved by the affirmative vote of at least~~
 10 ~~eight (8) board members. For purposes of acting under this~~
 11 ~~subsection, the board must have a quorum consisting of at~~
 12 ~~least one (1) member appointed under section 18(c)(2) of this~~
 13 ~~section and at least one (1) member appointed under section~~
 14 ~~18(c)(3) of this section.~~

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

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

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

23 (3) The board may make transfers only one (1) time during a
 24 calendar year.

25 (4) The board may not make a transfer that:

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

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

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

42 SECTION 18. IC 36-8-16.5-42 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. (a) A CMRS
 2 provider shall submit to the board sworn invoices related to a request
 3 for reimbursement under section 39 of this chapter. **An invoice**
 4 **submitted under this section must contain language swearing or**
 5 **affirming, under the penalty of perjury, that the representations**
 6 **made in the invoice are accurate to the best of the signer's**
 7 **knowledge. The signer must be:**

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

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

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

17 (b) If:

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

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

23 the board may contract with a third party auditor to audit the CMRS
 24 provider to determine whether the CMRS provider has used money
 25 received under this chapter in a manner consistent with this chapter.

26 SECTION 19. IC 36-8-16.5-43 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 43. The distribution of
 28 ~~emergency wireless emergency enhanced 911 funds to the PSAPs by~~
 29 ~~the board for cost recovery by PSAPs under section 39 of this~~
 30 ~~chapter~~ must be deposited by ~~a the county treasurer or a municipal~~
 31 ~~fiscal officer~~ in a separate fund set aside for the purposes allowed by
 32 section 41 of this chapter. The fund must be known as the _____
 33 (insert name of county) ~~or municipality~~ **wireless** emergency telephone
 34 system fund. The county treasurer ~~or the municipal fiscal officer~~ may
 35 invest money in the fund in the same manner that other money of the
 36 county ~~or municipality~~ may be invested, but income earned from the
 37 investment must be deposited in the fund set aside under this section.

38 SECTION 20. IC 36-8-16.5-46 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 46. Notwithstanding
 40 any other law, the board, a PSAP, political subdivision, CMRS
 41 provider, local exchange company, or an employee, director, officer, or
 42 agent of a PSAP, political subdivision, CMRS provider, or local



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1 exchange company, **or a member of the board or the board chair, or**
2 **an employee, an agent, or a representative of the board chair** is not
3 liable for damages in a civil action or subject to criminal prosecution
4 resulting from death, injury, or loss to persons or property incurred by
5 any person in connection with establishing, developing, implementing,
6 maintaining, operating, and providing **enhanced** wireless 911 service
7 in compliance with the requirements established by the FCC order and
8 rules adopted under the FCC order, except in the case of willful or
9 wanton misconduct.

10 SECTION 21. IC 36-8-16.5-17 IS REPEALED [EFFECTIVE JULY
11 1, 2002].

12 SECTION 22. [EFFECTIVE JULY 1, 2002] **Notwithstanding**
13 **IC 36-8-16.5-18, as amended by this act, a member appointed to the**
14 **wireless enhanced 911 advisory board under IC 36-8-16.5-18(c)(2),**
15 **before its amendment by this act, or under IC 36-8-16.5-18(c)(3),**
16 **before its amendment by this act, shall continue to serve on the**
17 **board until the expiration of the member's term. The governor**
18 **may not make a reappointment to any vacancy in the board under**
19 **IC 36-8-16.5-18(c)(2), as amended by this act, or under**
20 **IC 36-8-16.5-18(c)(3), as amended by this act, until the total**
21 **number of members of the board complies with the total number**
22 **of members of the board required by IC 36-8-16.5-18, as amended**
23 **by this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Public Policy, to which was referred Senate Bill No. 180, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete lines 13 through 31.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 180 as introduced.)

WYSS, Chairperson

Committee Vote: Yeas 10, Nays 0.

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