

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.

SENATE ENROLLED ACT No. 180

AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 36-8-16.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. As used in this chapter, "CMRS" refers to the commercial mobile radio service (as defined by 47 U.S.C. 332(d)(1)). The term includes the following:

- (1) Services commonly referred to as wireless.
- (2) Services provided by a wireless real time two-way voice communication device, including radio-telephone communications used in:
 - (A) cellular telephone service;
 - (B) personal communications service; or
 - (C) the functional or competitive equivalent of a radio-telephone communications line used in:
 - (i) cellular telephone service;
 - (ii) a personal communications service; or
 - (iii) a network radio access line.

(3) Any other wireless service that provides the user with direct access to a PSAP through the placement of a 911 call.

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

SECTION 3. IC 36-8-16.5-14.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.5. As used in this chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in full prospectively for the service and is issued an Indiana telephone number or an Indiana identification number for the service.**

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

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

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

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

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

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

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

(2) ~~Five (5) Three (3) members for a term of three (3) years who are appointed by the governor after the governor considers the recommendations of the executive committees of NENA and APCO that are submitted under subsection (b)(1).~~

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

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

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

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

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

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

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

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

SECTION 8. IC 36-8-16.5-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 25. Except as provided in section 34 of this chapter, the board shall assess a monthly ~~emergency wireless~~ **emergency** enhanced 911 fee on each CMRS mobile telephone number that has a billing address in Indiana: **subscriber.**

SECTION 9. IC 36-8-16.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 26. The board may adjust the ~~emergency~~ wireless **emergency** enhanced 911 fee that is

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assessed under section 25 of this chapter. The board shall assess the fees at rates that ensure full recovery over a reasonable period of time of costs incurred by CMRS providers and PSAPs to develop and maintain an enhanced wireless 911 system. The fees may not:

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

SECTION 10. IC 36-8-16.5-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. A CMRS provider, as part of its monthly billing process, may not pro-rate the monthly **emergency** wireless **emergency** enhanced 911 fee collected from the subscriber.

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

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

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

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

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

SECTION 15. IC 36-8-16.5-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 38. To recover costs under section 37 of this chapter, a CMRS provider must submit a full, sworn, true, complete, and detailed cost recovery plan. The board must approve the plan before the CMRS provider may recover costs from the

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fund under section 37 of this chapter. ~~The board may not approve an invoice if:~~

- ~~(1) reimbursement of a cost described in the invoice is not related to compliance with the requirements of the FCC order; or~~
- ~~(2) payment of the invoice would result in payment of more than one hundred twenty-five percent (125%) of the total amount contributed to the fund by a CMRS provider;~~

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

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

- (1) Three cents (\$0.03) of the ~~emergency~~ wireless ~~emergency~~ 911 fee collected from each subscriber must be ~~held~~ **deposited** in an ~~interest bearing~~ escrow account to be used ~~for to reimburse CMRS providers and PSAPs for costs associated with implementation of phase two (2) of the FCC order. The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers and PSAPs under this subdivision.~~ The board shall reevaluate the fees placed into escrow not later than May 1, 2000. The board shall determine if the fee should be reduced, remain the same, or be increased based on the latest information available concerning the costs associated with phase two (2) of the FCC order.
- (2) At least twenty-five cents (\$0.25) of the ~~emergency~~ wireless ~~emergency~~ 911 fee collected from each subscriber must be ~~held~~ **deposited** in an escrow ~~account~~ and used to reimburse CMRS providers for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC order and rules that are adopted by the FCC under the FCC order, including costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required to provide service as well as the costs of operating the service. **The board may invest money in the account in the manner prescribed by section 23 of this chapter and may use the proceeds of the investments to reimburse CMRS providers under this subdivision.** Except as provided by section 38 of this chapter, the ~~carrier~~ **CMRS provider** may only request funds for

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true cost recovery. The board may increase the amount held in escrow under this subdivision not more than one (1) time a calendar year. If the board adjusts the ~~emergency~~ **emergency** wireless **emergency** 911 fee under section 26 of this chapter within a calendar year, an adjustment to the amount held in escrow under this subdivision for the calendar year must be made at that time.

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

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

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(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 calendar year.~~

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

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

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

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

SECTION 18. IC 36-8-16.5-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 42. (a) A CMRS provider shall submit to the board sworn invoices related to a request for reimbursement under section 39 of this chapter. **An invoice submitted under this section must contain language swearing or affirming, under the penalty of perjury, that the representations**



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made in the invoice are accurate to the best of the signer's knowledge. The signer must be:

- (1) an employee or officer of the CMRS provider submitting the invoice; and
- (2) designated by the CMRS provider to sign on its behalf and bind the CMRS provider to the representations made.

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

(b) If:

- (1) the board receives a written complaint alleging that a CMRS provider has used money received under this chapter in a manner that is inconsistent with this chapter; and
- (2) a majority of the board votes to conduct an audit of the CMRS provider;

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

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

SECTION 20. IC 36-8-16.5-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 46. Notwithstanding any other law, the board, a PSAP, political subdivision, CMRS provider, local exchange company, or an employee, director, officer, or agent of a PSAP, political subdivision, CMRS provider, or local exchange company, **or a member of the board or the board chair, or an employee, an agent, or a representative of the board chair** is not liable for damages in a civil action or subject to criminal prosecution resulting from death, injury, or loss to persons or property incurred by any person in connection with establishing, developing, implementing,

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maintaining, operating, and providing **enhanced** wireless 911 service in compliance with the requirements established by the FCC order and rules adopted under the FCC order, except in the case of willful or wanton misconduct.

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

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

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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