

HOUSE BILL No. 1082

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8-16.5.

Synopsis: Emergency wireless 911 system. Creates the wireless 911 advisory board composed of the auditor of state and members appointed by the governor after considering the recommendations of the Association of Public Safety Communication Officials (APCO), the National Emergency Number Association (NENA), and the Commercial Mobile Radio Service (CMRS) providers. Requires the board to create the wireless emergency telephone system fund for the purpose of creating and maintaining an enhanced wireless 911 system. Requires the board to levy a monthly fee on each CMRS telephone number (other than a government telephone number) that has a billing address in the state. Allows CMRS providers to keep 2% of the fee
(Continued next page)

Effective: Upon passage.

Sturtz, Gulling

January 6, 1998, read first time and referred to Committee on Commerce and Economic Development.



Digest Continued

collected to defray administrative costs. Requires a CMRS provider to have a plan for cost recovery approved by the board. Prescribes the manner in which money in the fund must be managed. Prescribes purposes for which CMRS providers and public safety access points may use money from the fund. Prohibits the connection of automated 911 alerting devices to a wireless 911 service supplier's network. Makes using wireless emergency telephone service for a purpose other than obtaining public safety assistance or to bypass CMRS charges a Class A misdemeanor and enhances the offense to a Class D felony if a person obtains service from the use with a value of at least \$100.



Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE BILL No. 1082

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 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 16.5. Enhanced Wireless Emergency Telephone Service**
5 **Sec. 1. As used in this chapter, "APCO" refers to the Indiana**
6 **chapter of the Association of Public Safety Communication**
7 **Officials International.**

8 **Sec. 2. As used in this chapter, "automatic location**
9 **identification" means a wireless enhanced 911 service capability**
10 **that provides pseudo-automatic number identification that can be**
11 **used to identify a specific cell site transmitting a 911 call.**

12 **Sec. 3. As used in this chapter, "automatic number**
13 **identification" means a wireless enhanced 911 service capability**
14 **that enables the transmission of the ten (10) digit mobile handset**
15 **telephone number used to place a 911 call.**

1998

IN 1082—LS 6593/DI 93+



1 **Sec. 4.** As used in this chapter, "board" refers to the wireless
2 enhanced 911 advisory board established by section 18 of this
3 chapter.

4 **Sec. 5.** As used in this chapter, "CMRS" refers to the
5 commercial mobile radio service (as defined by 47 U.S.C.
6 332(d)(1)). The term includes the following:

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

18 **Sec. 6.** As used in this chapter, "CMRS provider" refers to a
19 person or entity that provides CMRS service. The term includes
20 facilities based and nonfacilities based resellers.

21 **Sec. 7.** As used in this chapter, "FCC order" refers to the order
22 of the Federal Communications Commission, FCC Docket No.
23 94-102, adopted June 12, 1996, with an effective date of October 1,
24 1996.

25 **Sec. 8.** As used in this chapter, "fund" refers to the wireless
26 emergency telephone system fund established under section 21(a)
27 of this chapter.

28 **Sec. 9.** As used in this chapter, "mobile telephone number"
29 means the ten (10) digit number assigned to a CMRS mobile phone.

30 **Sec. 10.** As used in this chapter, "NENA" refers to the Indiana
31 chapter of the National Emergency Number Association.

32 **Sec. 11.** As used in this chapter, "population" means the
33 population as reported by the most recent official United States
34 census.

35 **Sec. 12.** As used in this chapter, "proprietary information"
36 includes the following:

- 37 (1) Customer lists and related information.
38 (2) Technology descriptions, technical information, or trade
39 secrets (as defined by IC 24-2-3-2).
40 (3) Information concerning the actual or developmental costs
41 of wireless enhanced 911 systems that are developed,
42 produced, or received internally by a CMRS provider or by



1 a CMRS provider's employees, directors, officers, or agents.

2 **Sec. 13.** As used in this chapter, "PSAP" refers to the public
3 safety answering point that is the public safety agency that receives
4 incoming 911 calls and dispatches appropriate public safety
5 agencies to respond to the calls.

6 **Sec. 14.** As used in this chapter, "subscriber" refers to a
7 subscriber for CMRS service.

8 **Sec. 15.** As used in this chapter, "pseudo-ANI" refers to
9 pseudo-automatic number identification providing a wireless
10 enhanced 911 service capability enabling the transmission of the
11 seven (7) or ten (10) digit number assigned to a specific cell site or
12 cell face and used to identify the approximate location of a wireless
13 caller.

14 **Sec. 16.** As used in this chapter, "wireless 911" means an
15 emergency telephone system that:

16 (1) provides a CMRS user with the ability to reach emergency
17 services by dialing the digits nine (9) one (1) one (1); and

18 (2) is complimentary to a wireline enhanced emergency
19 telephone system (as defined in IC 36-8-16-2).

20 **Sec. 17. (a)** The wireless board, region 1, is the area comprising
21 Adams, Allen, Blackford, Dekalb, Delaware, Elkhart, Grant,
22 Huntington, Jay, Kosciusko, LaGrange, Madison, Miami, Noble,
23 Randolph, Steuben, Wabash, Wells, and Whitley counties.

24 (b) The wireless board, region 2, is the area comprising Benton,
25 Carroll, Cass, Clinton, Fountain, Fulton, Howard, Jasper, Lake,
26 LaPorte, Marshall, Montgomery, Newton, Porter, Pulaski, St.
27 Joseph, Starke, Tippecanoe, Tipton, Warren, and White counties.

28 (c) The wireless board, region 3, is the area comprising Clay,
29 Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence,
30 Martin, Monroe, Orange, Owen, Park, Perry, Pike, Posey, Putnam,
31 Spencer, Sullivan, Vanderburgh, Vermillion, Vigo, and Warrick
32 counties.

33 (d) The wireless board, region 4, is the area comprising
34 Bartholomew, Brown, Clark, Dearborn, Decatur, Fayette, Floyd,
35 Franklin, Jackson, Jefferson, Jennings, Harrison, Henry, Ohio,
36 Ripley, Rush, Scott, Switzerland, Union, Washington, and Wayne
37 counties.

38 (e) The wireless board, region 5, is the area comprising Boone,
39 Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and
40 Shelby counties.

41 **Sec. 18. (a)** The wireless enhanced 911 advisory board is
42 established.



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

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

7 **(2) The CMRS providers authorized to provide CMRS in**
 8 **Indiana shall jointly recommend three (3) individuals.**

9 **(c) The board consists of the following nine (9) members:**

10 **(1) The auditor of state or the auditor's designee. The auditor**
 11 **of state or the auditor's designee is chairperson of the board**
 12 **for a term concurrent with the auditor of state's term of**
 13 **office. However, the auditor of state's designee serves at the**
 14 **pleasure of the auditor of state.**

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

19 **(3) Three (3) members for a term of three (3) years who are**
 20 **appointed by the governor after considering the**
 21 **recommendations of the CMRS providers that are submitted**
 22 **under subsection (b)(2).**

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

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

27 **Sec. 19. A majority of the members of the board constitutes a**
 28 **quorum for purposes of taking action. The board may take action**
 29 **approved by a majority of the members of the board present at a**
 30 **meeting of the board at which a quorum is present.**

31 **Sec. 20. (a) Each member of the board who is not a state**
 32 **employee is not entitled to receive the minimum salary per diem**
 33 **provided by IC 4-10-11-2.1(b). The member is, however, entitled to**
 34 **reimbursement for traveling expenses as provided under**
 35 **IC 4-13-1-4 and other expenses actually incurred in connection**
 36 **with the member's duties as provided in the state policies and**
 37 **procedures established by the Indiana department of**
 38 **administration and approved by the budget agency.**

39 **(b) Each member of the board who is a state employee is entitled**
 40 **to reimbursement for travel expenses as provided under**
 41 **IC 4-13-1-4 and other expenses actually incurred in connection**
 42 **with the member's duties as provided in the state travel policies**



1 and procedures established by the Indiana department of
2 administration and approved by the budget agency.

3 **Sec. 21. (a) The wireless emergency telephone system fund is**
4 **established for the purpose of creating and maintaining an**
5 **enhanced wireless 911 system. The board shall administer the fund**
6 **in an insured, interest-bearing account.**

7 **(b) The expenses of administering the fund must be paid from**
8 **money in the fund.**

9 **(c) The board may invest the money in the fund not currently**
10 **needed to meet the obligations of the fund in the same manner as**
11 **public money is invested by the treasurer of state.**

12 **Sec. 22. The fund consists of the following:**

13 **(1) Service charges assessed on CMRS users in the state under**
14 **section 25 of this chapter.**

15 **(2) Appropriations made by the general assembly.**

16 **(3) Grants and gifts intended for deposit in the fund.**

17 **(4) Interest, premiums, gains, or other earnings on the fund.**

18 **Sec. 23. Money in the fund is not the property of the state and**
19 **may not be commingled with state funds or appropriated by the**
20 **general assembly.**

21 **Sec. 24. The auditor of state shall audit the fund every two (2)**
22 **years to determine whether the fund is being managed in**
23 **accordance with this chapter. The auditor of state shall provide the**
24 **audit to the board to use in determining whether to adjust the**
25 **emergency wireless 911 fee under section 26 of this chapter.**

26 **Sec. 25. Except as provided in section 34 of this chapter, the**
27 **board shall assess a monthly emergency wireless enhanced 911 fee**
28 **on each CMRS mobile telephone number that has a billing address**
29 **in Indiana.**

30 **Sec. 26. The board may adjust the emergency wireless enhanced**
31 **911 fee that is assessed under section 25 of this chapter. The board**
32 **shall assess the fees at rates that ensure full recovery over a**
33 **reasonable period of time of costs incurred by CMRS providers**
34 **and PSAPs to develop and maintain an enhanced wireless 911**
35 **system. The fees may not:**

36 **(1) be adjusted more than one (1) time in a calendar year;**

37 **(2) be raised more than seven cents (\$0.07) by an adjustment;**
38 **or**

39 **(3) exceed one dollar (\$1) per month for each telephone**
40 **number.**

41 **Sec. 27. The board may retain an independent, third party**
42 **accounting firm for purposes of processing checks and distributing**



1 funds as directed by the board and as allowed by this chapter.

2 **Sec. 28.** The board may adopt rules under IC 4-22-2 necessary
3 to implement this chapter.

4 **Sec. 29.** An additional fee relating to the provision of wireless
5 911 service may not be levied by a state or local unit of
6 government.

7 **Sec. 30.** Except as provided in section 34 of this chapter, each
8 CMRS provider, as part of its monthly billing process, shall bill
9 each CMRS mobile telephone number for the emergency wireless
10 enhanced 911 fee. The CMRS provider may list the fee as a
11 separate line item on each bill. If a CMRS provider receives a
12 partial payment for a monthly bill from a CMRS subscriber, the
13 CMRS provider shall apply the payment against the amount the
14 CMRS subscriber owes to the CMRS provider before applying the
15 payment against the fee.

16 **Sec. 31.** A CMRS provider, as part of its monthly billing
17 process, may not pro-rate the monthly emergency wireless
18 enhanced 911 fee collected from the subscriber.

19 **Sec. 32.** A CMRS provider is not required to take legal action to
20 enforce the collection of the emergency wireless enhanced 911 fee
21 for which a subscriber is billed. However, a collection action may
22 be initiated by the board. A court finding for the board in the
23 action may award reasonable costs and attorney's fees associated
24 with the collection action.

25 **Sec. 33.** The wireless enhanced 911 fee is exempt from state and
26 local taxation.

27 **Sec. 34.** A CMRS number paid for from state, county, city, and
28 town government funds or the funds of associated political
29 subdivisions is exempt from the emergency wireless enhanced 911
30 fee.

31 **Sec. 35.** A CMRS provider may keep two percent (2%) of the
32 emergency wireless enhanced 911 fee collected each month from
33 each subscriber for the purpose of defraying the administrative
34 costs of collecting the fee.

35 **Sec. 36.** A fee collected by a CMRS provider under this chapter,
36 less the administrative fee described in section 35 of this chapter,
37 must be remitted to the board for deposit into the fund not more
38 than sixty (60) days after the end of the calendar month in which
39 the fee is collected.

40 **Sec. 37.** A CMRS provider may recover all of its cost of
41 implementing enhanced wireless 911 service from the fund.

42 **Sec. 38.** To recover costs under section 37 of this chapter, a



1 CMRS provider must submit a full, sworn, true, complete, and
2 detailed cost recovery plan. The board must approve the plan
3 before the CMRS provider may recover costs from the fund under
4 section 37 of this chapter. The amount requested and paid to a
5 CMRS provider may not exceed one hundred twenty-five percent
6 (125%) of the amount for which the CMRS provider may be
7 reimbursed under section 39(2) of this chapter. An amount paid
8 that exceeds the amount of reimbursement authorized by section
9 39(2) of this chapter must be attributable to the FCC order and
10 approved by the board.

11 **Sec. 39.** Except as provided by section 26 of this chapter, the
12 fund must be managed in the following manner:

13 (1) Three cents (\$0.03) of the emergency wireless 911 fee
14 collected from each subscriber must be held in an interest
15 bearing escrow account to be used for implementation of
16 phase two (2) of the FCC order. The board shall reevaluate
17 the fees placed into escrow not later than May 1, 2000. The
18 board shall determine if the fee should be reduced, remain the
19 same, or be increased based on the latest information
20 available concerning the costs associated with phase two (2)
21 of the FCC order.

22 (2) At least twenty-five cents (\$0.25) of the emergency wireless
23 911 fee collected from each subscriber must be held in escrow
24 and used to reimburse CMRS providers for the actual costs
25 incurred by the CMRS providers in complying with the
26 wireless 911 requirements established by the FCC order and
27 rules that are adopted by the FCC under the FCC order,
28 including costs and expenses incurred in designing,
29 upgrading, purchasing, leasing, programming, installing,
30 testing, or maintaining all necessary data, hardware, and
31 software required to provide service as well as the costs of
32 operating the service. Except as provided by section 38 of this
33 chapter, the carrier may only request funds for true cost
34 recovery. The board may adjust the amount held in escrow
35 under this subdivision not more than one (1) time a calendar
36 year. If the board adjusts the emergency wireless 911 fee
37 under section 26 of this chapter within a calendar year, an
38 adjustment to the amount held in escrow under this
39 subdivision for the calendar year must be made at that time.

40 (3) Two percent (2%) of the emergency wireless 911 fee
41 collected from each subscriber may be used by the board to
42 recover the board's expenses in administering this chapter.



1 **However, the board may increase this percentage at the time**
 2 **the board may adjust the monthly fee assessed against each**
 3 **CMRS mobile telephone number to allow for full recovery of**
 4 **administration expenses.**

5 **(4) Money remaining in the fund must be held in escrow and**
 6 **used for monthly distributions to eligible PSAPs that provide**
 7 **wireless enhanced 911 service and that have submitted**
 8 **written notice to the board. The board shall maintain a list of**
 9 **eligible PSAPs. The fund held in escrow under this subdivision**
 10 **must be distributed in the following manner:**

11 **(A) Ninety-eight percent (98%) must be distributed among**
 12 **the eligible PSAPs based upon the percentage of the state's**
 13 **population (as reported in the most recent official United**
 14 **States census) served by each PSAP.**

15 **(B) Two percent (2%) must be distributed among the**
 16 **eligible PSAPs under a formula:**

17 **(i) established by the board; and**

18 **(ii) based on a PSAP's CMRS 911 call volume.**

19 **Sec. 40. To be eligible to receive distributions from the fund**
 20 **under section 39 of this chapter, a PSAP must comply with the**
 21 **wireless enhanced 911 requirements established by the FCC order**
 22 **and rules adopted by the FCC under the FCC order. Distribution**
 23 **to a PSAP must begin in the first full month after the PSAP**
 24 **becomes eligible.**

25 **Sec. 41. A PSAP may use its distribution made under section 39**
 26 **of this chapter for the lease, purchase, or maintenance of wireless**
 27 **enhanced emergency telephone equipment, including:**

28 **(1) necessary computer hardware, software, and data base**
 29 **equipment;**

30 **(2) personnel expense and training;**

31 **(3) the provision of wireless enhanced emergency service; and**

32 **(4) educating consumers about the operations, limitations,**
 33 **role, and responsible use of enhanced 911 service.**

34 **Sec. 42. A CMRS provider shall submit to the board sworn**
 35 **invoices related to a request for reimbursement under section 39**
 36 **of this chapter. The board may not approve an invoice for**
 37 **reimbursement of costs that are not related to compliance with the**
 38 **wireless enhanced 911 service requirements established by the**
 39 **FCC order and the rules adopted by the FCC under the FCC**
 40 **order.**

41 **Sec. 43. The distribution of emergency wireless enhanced 911**
 42 **funds to the PSAPs by the board must be deposited by a county**



1 treasurer or a municipal fiscal officer in a separate fund set aside
 2 for the purposes allowed by section 41 of this chapter. The fund
 3 must be known as the _____ (insert name of county or
 4 municipality) emergency telephone system fund. The county
 5 treasurer or the municipal fiscal officer may invest money in the
 6 fund in the same manner that other money of the county or
 7 municipality may be invested, but income earned from the
 8 investment must be deposited in the fund set aside under this
 9 section.

10 **Sec. 44.** A CMRS provider is not required to provide wireless
 11 911 service unless the elements requiring CMRS providers to
 12 provide wireless 911 service under the FCC order are present.

13 **Sec. 45. (a)** All proprietary information submitted to the board
 14 or the auditor of state is confidential. Notwithstanding any other
 15 law, proprietary information submitted under this chapter is not
 16 subject to subpoena, and proprietary information submitted under
 17 this chapter may not be released to a person other than to the
 18 submitting CMRS provider without the permission of the
 19 submitting CMRS provider.

20 **(b)** General information collected by the board or the auditor of
 21 state may be released or published only in aggregate amounts that
 22 do not identify or allow identification of numbers of subscribers or
 23 revenues attributable to an individual CMRS provider.

24 **Sec. 46.** Notwithstanding any other law, a PSAP, political
 25 subdivision, CMRS provider, local exchange company, or an
 26 employee, director, officer, or agent of a PSAP, political
 27 subdivision, CMRS provider, or local exchange company is not
 28 liable for damages in a civil action or subject to criminal
 29 prosecution resulting from death, injury, or loss to persons or
 30 property incurred by any person in connection with establishing,
 31 developing, implementing, maintaining, operating, and providing
 32 wireless 911 service in compliance with the requirements
 33 established by the FCC order and rules adopted under the FCC
 34 order, except in the case of willful or wanton misconduct.

35 **Sec. 47. (a)** A person may not use the wireless 911 service except
 36 to make emergency calls that may result in dispatch of the
 37 appropriate response for fire suppression and rescue, emergency
 38 medical or ambulance services, hazardous material, disaster or
 39 major emergency occurrences, and law enforcement activities.

40 **(b)** A person who knowingly or intentionally violates this section
 41 commits a Class A misdemeanor.

42 **Sec. 48. (a)** A person may not connect an automatic alarm or



1 other automated alerting device to a wireless 911 service supplier's
2 network that:

- 3 (1) causes the number 911 to be automatically dialed; or
4 (2) provides through a prerecorded message information
5 regarding obtaining 911 emergency services.

6 (b) A person who knowingly or intentionally violates this section
7 commits a Class A misdemeanor.

8 **Sec. 49. (a) Wireless emergency 911 telephone service may be**
9 **used only for emergency communications by the public.**

10 (b) Except as provided in subsection (c), a person who
11 knowingly or intentionally uses or attempts to use wireless
12 emergency telephone service:

- 13 (1) for a purpose other than obtaining public safety
14 assistance; or
15 (2) in an effort to avoid CMRS charges;

16 commits a Class A misdemeanor.

17 (c) A person who:

- 18 (1) knowingly or intentionally uses wireless emergency
19 telephone service in a manner prohibited by subsection (b);
20 and

- 21 (2) obtains CMRS service with a value of at least one hundred
22 dollars (\$100) from the use;

23 commits a Class D felony.

24 **SECTION 2. [EFFECTIVE UPON PASSAGE] (a)**
25 **Notwithstanding IC 36-8-16.5-18(c)(2), as added by this act, the**
26 **initial members appointed to the wireless 911 advisory board**
27 **under IC 36-8-16.5-18(c)(2) are appointed for the following terms:**

- 28 (1) Two (2) members for a term of one (1) year.
29 (2) Two (2) members for a term of two (2) years.
30 (3) One (1) member for a term of three (3) years.

31 (b) Notwithstanding IC 36-8-16.5-18(c)(3), as added by this act,
32 the initial members appointed to the wireless 911 advisory board
33 under IC 36-8-16.5-18(c)(3) are appointed for the following terms:

- 34 (1) One (1) member for a term of one (1) year.
35 (2) One (1) member for a term of two (2) years.
36 (3) One (1) member for a term of three (3) years.

37 (c) The initial members appointed to the wireless 911 advisory
38 board under IC 36-8-16.5-18, as added by this act, must be
39 appointed not later than the later of May 1, 1998, or sixty (60) days
40 after the day this act takes effect.

41 (d) Notwithstanding IC 36-8-16.5-26, as added by this act, the
42 board shall set the initial wireless enhanced 911 fee described by



1 **IC 36-8-16.5-25, as added by this act, at sixty-five cents (\$0.65) per**
2 **month for each commercial mobile radio service telephone**
3 **number, to be imposed not later than May 1, 1998. The fee must be**
4 **applied uniformly throughout Indiana. The first distribution from**
5 **the 911 fund to the public safety answering points may not be later**
6 **than September 1, 1998.**

7 (e) **Notwithstanding IC 36-8-16.5-26, as added by this act, the**
8 **board may not raise the wireless enhanced 911 fee described by**
9 **IC 36-8-16.5-25, as added by this act, earlier than one (1) year after**
10 **the date this act takes effect.**

11 (f) **This SECTION expires July 1, 2002.**
12 **SECTION 3. An emergency is declared for this act.**

