
HOUSE BILL No. 1278

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-8.1-1-1; IC 8-1-34.5; IC 36-8-16.5.

Synopsis: Broadcast satellite service fee and 911 fees. Imposes a direct broadcast satellite service fee on direct broadcast satellite service providers at the same percentage rate of gross revenue as the cable service franchise fee rate in effect in a local government unit on December 31, 2009. Permits the fee to be passed through to customers of the provider. Requires a provider to remit the fees quarterly to the department of state revenue. Requires a provider to submit a quarterly report to the department indicating a provider's gross revenue and the amount of fees paid with respect to each unit. Requires the department to publish the direct broadcast satellite service fee rates before August 1, 2010. Requires the department to distribute the fees quarterly to each unit. Permits the wireless enhanced 911 advisory board to set the wireless emergency enhanced 911 fee at a rate not less \$2 beginning July 1, 2010, on each commercial mobile radio service subscriber that is a customer having a place of primary use in Indiana. Provides for a distribution of 25% of a part of the 911 fees to counties that have more than two public safety answering points (PSAPs) and 75% to counties that have reduced the number of PSAPs to no more than two.

Effective: Upon passage; July 1, 2010.

Crawford

January 12, 2010, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1278



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration and to make an appropriation.

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

1 SECTION 1. IC 6-8.1-1-1, AS AMENDED BY P.L.182-2009(ss),
2 SECTION 247, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2010]: Sec. 1. "Listed taxes" or "taxes" includes
4 only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the
5 riverboat admissions tax (IC 4-33-12); the riverboat wagering tax
6 (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); the type II
7 gambling game excise tax (IC 4-36-9); the gross income tax (IC 6-2.1)
8 (repealed); the utility receipts and utility services use taxes (IC 6-2.3);
9 the state gross retail and use taxes (IC 6-2.5); the adjusted gross income
10 tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the
11 county adjusted gross income tax (IC 6-3.5-1.1); the county option
12 income tax (IC 6-3.5-6); the county economic development income tax
13 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial
14 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative
15 fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor
16 carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a
17 reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax



1 (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the excise
 2 tax imposed on recreational vehicles and truck campers (IC 6-6-5.1);
 3 the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax
 4 (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax
 5 (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax
 6 (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum
 7 severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the
 8 various food and beverage taxes (IC 6-9); the county admissions tax
 9 (IC 6-9-13 and IC 6-9-28); **the direct broadcast satellite service fee**
 10 **(IC 8-1-34.5)**; the regional transportation improvement income tax
 11 (IC 8-24-17); the oil inspection fee (IC 16-44-2); the emergency and
 12 hazardous chemical inventory form fee (IC 6-6-10); the penalties
 13 assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and
 14 penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the
 15 underground storage tank fee (IC 13-23); the solid waste management
 16 fee (IC 13-20-22); and any other tax or fee that the department is
 17 required to collect or administer.

18 SECTION 2. IC 8-1-34.5 IS ADDED TO THE INDIANA CODE
 19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2010]:

21 **Chapter 34.5. Direct Broadcast Satellite Service Fee**

22 **Sec. 1. As used in this chapter, "department" means the**
 23 **department of state revenue.**

24 **Sec. 2. (a) As used in this chapter, "direct broadcast satellite**
 25 **service" means distributing or broadcasting video programming**
 26 **or services by satellite directly to receiving equipment located at an**
 27 **end user subscriber's or an end user customer's premises.**

28 **(b) The term includes but is not limited to the following:**

29 **(1) Renting receiving or recording equipment used by a**
 30 **subscriber or customer to obtain or use the service.**

31 **(2) Providing premium channels.**

32 **(3) Installing or repairing receiving or recording equipment**
 33 **used by a subscriber or customer to obtain or use the service.**

34 **(4) Providing music or other audio services or channels.**

35 **(5) Any other service provided in connection with the**
 36 **provision of direct broadcast satellite service.**

37 **Sec. 3. As used in this chapter, "direct broadcast satellite service**
 38 **provider" means any person that is transmitting, broadcasting, or**
 39 **otherwise providing direct broadcast satellite service to**
 40 **subscribers in Indiana.**

41 **Sec. 4. (a) As used in this chapter, "gross revenue" means all**
 42 **consideration of any kind or nature, including cash, credits,**

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1 property, and in kind contributions received by a direct broadcast
 2 satellite service provider or an affiliate of the provider.
 3 (b) For purposes of subsection (a), gross revenue includes the
 4 following fees and charges to subscribers for direct broadcast
 5 satellite service:
 6 (1) Recurring monthly charges for direct broadcast satellite
 7 service.
 8 (2) Event based charges for direct broadcast satellite service,
 9 including pay per view and video on demand charges.
 10 (3) Charges for the rental of equipment related to providing
 11 direct broadcast satellite service.
 12 (4) Service charges related to providing direct broadcast
 13 satellite service, including activation, installation, repair, and
 14 maintenance charges.
 15 (5) Administrative charges related to providing direct
 16 broadcast satellite service, including service order and service
 17 termination charges.
 18 (6) Any other fee or charge that would be included in gross
 19 revenue as determined under IC 8-1-34-23, regardless of
 20 whether the direct broadcast satellite service provider, or an
 21 affiliate of the provider, is subject to IC 8-1-34.
 22 (c) For purposes of subsection (a), gross revenue does not
 23 include the following received by a direct broadcast satellite service
 24 provider or an affiliate of the provider:
 25 (1) Revenue not actually received, regardless of whether it is
 26 billed, including bad debts.
 27 (2) Revenue received by an affiliate or any other person in
 28 exchange for supplying goods and services used by a direct
 29 broadcast satellite service provider.
 30 (3) Refunds, rebates, or discounts made to a subscriber,
 31 advertiser, or other person.
 32 (4) Revenue from a service other than direct broadcast
 33 satellite service, including:
 34 (A) telecommunications service (as defined in 47 U.S.C.
 35 153(46));
 36 (B) information service (as defined in 47 U.S.C. 153(20));
 37 or
 38 (C) any other service that is not direct broadcast satellite
 39 service.
 40 (5) The tax imposed under IC 6-2.5-4-11.
 41 (6) Any tax of general applicability imposed on a direct
 42 broadcast satellite service provider, or a purchaser of direct

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broadcast satellite service, by a federal, state, or local governmental entity and required to be collected by a person and remitted to the taxing entity, including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(7) Any foregone revenue from providing free or reduced cost direct broadcast satellite service to any person, including employees of the direct broadcast satellite service provider or any governmental entity as required or permitted by federal, state, or local law, except revenue foregone in exchange for the goods or services through a trade or barter arrangement.

(8) Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive direct broadcast satellite service from the direct broadcast satellite service provider.

(9) Reimbursements made by programmers to the direct broadcast satellite service provider for marketing costs incurred by the direct broadcast satellite service provider for the introduction of new programming that exceed the actual costs incurred by the direct broadcast satellite service provider.

(10) Late payment fees collected from customers.

(11) Charges, other than those charges described in subsection (b), that are aggregated or bundled with charges described in subsection (b) on a customer's bill, if the direct broadcast satellite service provider can reasonably identify the charges in its books and records kept in the regular course of business.

Sec. 5. As used in this chapter, "person" includes an administrator, an assignee, an association, a bank, a bureau, a club, a commissioner, a consignee, a cooperative association, a corporation, an estate, an executor, a fiduciary, a firm, a fraternity, an Indiana political subdivision engaged in private or proprietary activities, an individual, an institution, a joint venture, a limited liability company, a lodge, a national bank, a partnership, a pool, a receiver, a society, a sorority, a syndicate, a trust, or a trustee.

Sec. 6. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

Sec. 7. (a) Beginning January 1, 2011, a fee, known as the direct broadcast satellite service fee, is imposed upon any direct broadcast satellite service provider for the privilege of selling direct broadcast satellite service in Indiana and based on gross revenue derived each calendar quarter from selling, transmitting,

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1 distributing, or otherwise providing direct broadcast satellite
 2 service in each unit included in the provider's service area.

3 (b) The direct broadcast satellite service fee is imposed at a
 4 percentage equal to the franchise fee percentage authorized under
 5 IC 8-1-34-24 in the unit that is in effect as of December 31, 2009,
 6 and paid to the unit by a holder of a certificate issued under
 7 IC 8-1-34-17. The direct broadcast satellite service fee percentage
 8 must be based on the billing address of the direct broadcast
 9 satellite service subscriber at the time of the sale of the direct
 10 broadcast satellite service. The department shall determine the
 11 franchise fee percentage authorized under IC 8-1-34-24 in each
 12 unit in effect as of December 31, 2009, and paid to each unit by a
 13 holder of a certificate issued under IC 8-1-34-17. The department
 14 of state revenue shall publish a report setting forth the applicable
 15 direct broadcast satellite service fee percentages before August 1,
 16 2010.

17 (c) The direct broadcast satellite service fee is in addition to the
 18 state gross retail tax and use tax imposed by IC 6-2.5.

19 (d) The direct broadcast satellite service fee may be passed
 20 through to, and collected from, the direct broadcast satellite
 21 service provider's customers in Indiana. To the extent allowed
 22 under federal or state law, a direct broadcast satellite service
 23 provider may identify as a separate line item on each regular bill
 24 issued to a customer the amount of the total bill assessed as a direct
 25 broadcast satellite service fee under this section.

26 Sec. 8. (a) Each direct broadcast satellite service provider liable
 27 for the direct broadcast satellite service fee shall file a report for
 28 each calendar quarter and pay to the department the fee imposed
 29 by this chapter for each calendar quarter. A direct broadcast
 30 satellite service provider shall file a report for each calendar
 31 quarter with the department and pay the direct broadcast satellite
 32 service fee for that calendar quarter to the department not later
 33 than twenty (20) days after the end of that calendar quarter. The
 34 report must include a summary of gross revenue and fees
 35 categorized by unit. This subsection does not create a liability of
 36 the direct broadcast satellite service provider directly to a unit.

37 (b) The department shall prescribe the form of the direct
 38 broadcast satellite service fee report required under subsection (a).

39 (c) The money received from the fees collected by the
 40 department shall be credited to a special account to make
 41 distributions to each unit before the last business day in January,
 42 April, July, and October, based on the amount of fees received in

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1 **that month for the most recent calendar quarter from each**
2 **provider that provides direct broadcast satellite service in the unit.**
3 **The money is appropriated to make the distributions.**

4 SECTION 3. IC 36-8-16.5-25.5 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 25.5. (a) As used
6 in this section, "customer" and "place of primary use" have the
7 meanings set forth in IC 6-8.1-15.

8 (b) Except as provided in section 34 of this chapter, the board shall
9 assess, **after June 30, 2010**, a monthly wireless emergency enhanced
10 911 fee **of at least two dollars (\$2)** on each CMRS subscriber that is
11 a customer having a place of primary use in Indiana. A customer's
12 place of primary use shall be determined in the manner provided by
13 IC 6-8.1-15.

14 SECTION 4. IC 36-8-16.5-26, AS AMENDED BY P.L.146-2005,
15 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 UPON PASSAGE]: Sec. 26. (a) The board may adjust the wireless
17 emergency enhanced 911 fee that is assessed under section 25.5 of this
18 chapter. The board shall assess the fee at rates that ensure full recovery
19 over a reasonable period of time of:

- 20 (1) costs incurred by CMRS providers before July 1, 2005; and
- 21 (2) the amount needed for the board to make distributions to
- 22 PSAPs consistent with this chapter;

23 to develop and maintain an enhanced wireless 911 system.

- 24 (b) The fee assessed under section 25.5 of this chapter may not:
25 (1) be raised or lowered more than one (1) time in a calendar year;
26 **or**
27 (2) be raised more than seven cents (\$0.07) by an adjustment. ~~or~~
28 (3) ~~exceed one dollar (\$1) per month for each telephone number.~~

- 29 ~~(c) If:~~
30 ~~(1) all CMRS providers have been reimbursed for their costs as~~
31 ~~provided in section 39(c) of this chapter; and~~
32 ~~(2) the fee assessed under section 25.5 of this chapter is greater~~
33 ~~than fifty cents (\$0.50);~~

34 ~~the board shall reduce the fee so that the fee is not more than fifty cents~~
35 ~~(\$0.50). A reduction of the fee under this subsection is not to be~~
36 ~~considered an adjustment under subsection (a).~~

37 SECTION 5. IC 36-8-16.5-39, AS AMENDED BY P.L.146-2005,
38 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
39 UPON PASSAGE]: Sec. 39. (a) Except as provided by section 26 of
40 this chapter and subsections (b) and (c), the fund must be managed in
41 the following manner:

- 42 (1) Three cents (\$0.03) of the wireless emergency 911 fee

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1 collected from each subscriber must be deposited in an escrow
2 account to be used to reimburse:

3 (A) CMRS providers, PSAPs, and the board for costs
4 associated with implementation of phase two (2) of the FCC
5 order; and

6 (B) the board for costs associated with other wireless enhanced
7 911 services mandated by the FCC and specified in the FCC
8 order but not incurred by CMRS providers or PSAPs.

9 A CMRS provider or a PSAP may recover costs under this
10 chapter if the costs are incurred before July 1, 2005, and invoiced
11 to the board not later than December 31, 2005. The board may
12 invest money in the account in the manner prescribed by section
13 23 of this chapter and may use the proceeds of the investments to
14 reimburse CMRS providers and PSAPs under this subdivision.

15 (2) At least twenty-five cents (\$0.25) of the wireless emergency
16 911 fee collected from each subscriber must be deposited in an
17 escrow account and used to reimburse CMRS providers for the
18 actual costs incurred by the CMRS providers before July 1, 2005,
19 in complying with the wireless 911 requirements established by
20 the FCC order and rules that are adopted by the FCC under the
21 FCC order, including costs and expenses incurred in designing,
22 upgrading, purchasing, leasing, programming, installing, testing,
23 or maintaining all necessary data, hardware, and software
24 required to provide service as well as the costs of operating the
25 service. The board may invest money in the account in the manner
26 prescribed by section 23 of this chapter and may use the proceeds
27 of the investments to reimburse CMRS providers under this
28 subdivision. The CMRS provider may only request funds for true
29 cost recovery. The board may increase the amount held in escrow
30 under this subdivision not more than one (1) time a calendar year.
31 If the board adjusts the wireless emergency 911 fee under section
32 26(a) of this chapter within a calendar year, an adjustment to the
33 amount held in escrow under this subdivision for the calendar
34 year must be made at that time.

35 (3) Two percent (2%) of the wireless emergency 911 fee collected
36 from each subscriber may be used by the board to recover the
37 board's expenses in administering this chapter. However, the
38 board may increase this percentage at the time the board may
39 adjust the monthly fee assessed against each subscriber to allow
40 for full recovery of administration expenses.

41 (4) The remainder of the wireless emergency 911 fee collected
42 from each subscriber must be distributed **and used** in the

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following manner:

(A) The board shall distribute:

(i) twenty-five percent (25%) of the remainder 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, not complying with section 51 of this chapter; and~~

(ii) seventy-five percent (75%) of the remainder on a monthly basis to each county complying with section 51 of this chapter;

based upon the county's percentage of the state's population (as reported in the most recent official United States census).

(B) A county must use a distribution received under this clause subdivision to make distributions to 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) The amount of the fee remaining, if any, after the distributions required under clause (A) must be distributed 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) 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 chapter and at least one (1) member appointed under section 18(c)(3) of this chapter.

(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.

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- (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.
- (c) If all CMRS providers have been reimbursed for their costs under this chapter, and the fee has been reduced under section 26(c) of this chapter, the board shall manage the fund in the following manner:
 - (1) One cent (\$0.01) of the 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 amount at the time the board may adjust the monthly fee assessed against each subscriber to allow for full recovery of administration expenses.
 - (2) Thirty-eight and three tenths cents (\$0.383) of the wireless emergency 911 fee collected from each subscriber must be distributed to each county containing at least one (1) PSAP, as identified in the county notice required by section 40 of this chapter. The board shall make these distributions in the following manner:
 - (A) The board shall distribute on a monthly basis to each eligible county thirty-four and four tenths cents (\$0.344) of the wireless emergency 911 fee based upon the county's percentage of the state's population.
 - (B) The board shall distribute on a monthly basis to each eligible county three and nine tenths cents (\$0.039) of the wireless emergency 911 fee equally among the eligible counties. 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.
 - (C) The board shall deposit the remainder of the wireless emergency 911 fee collected from each subscriber into an escrow account to be used for costs associated with other wireless enhanced 911 services mandated by the FCC and specified in the FCC order but not incurred by PSAPs. 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 for costs associated with other

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1 wireless enhanced 911 services mandated by the FCC but not
2 specified in the FCC order or to make distributions to PSAPs
3 under this section.
4 (3) If the fee has been reduced under section 26(c) of this chapter,
5 the board shall determine how money remaining in the accounts
6 or money for uses described in subsection (a) is to be allocated
7 into the accounts described in this subsection or used for
8 distributions under this subsection.
9 This subsection does not affect the transfer provisions set forth in
10 subsection (b).
11 **SECTION 6. An emergency is declared for this act.**

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