

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1086 be amended to read as follows:

- 1 Page 43, between lines 40 and 41, begin a new paragraph and insert:
- 2 "SECTION 37. IC 34-30-2-156.2 IS ADDED TO THE INDIANA
- 3 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
- 4 [EFFECTIVE JULY 1, 2010]: **Sec. 156.2. IC 36-8-16.6-18**
- 5 **(Concerning sellers of prepaid wireless telecommunications service**
- 6 **for provision of 911 or wireless 911 service and lawful assistance**
- 7 **to law enforcement officers).**
- 8 SECTION 38. IC 36-8-16.5-14.5 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14.5. As used in this
- 10 chapter, "prepaid subscriber" refers to a CMRS subscriber who pays in
- 11 full prospectively for the service and is issued an Indiana telephone
- 12 number or an Indiana identification number for the service: **user" has**
- 13 **the meaning set forth in IC 36-8-16.6-5.**
- 14 SECTION 39. IC 36-8-16.5-14.7 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14.7. As used in this
- 16 chapter, "standard ~~subscriber~~ **user" or "user"** refers to a CMRS
- 17 ~~subscriber~~ **user** who pays retrospectively for the service and has an
- 18 Indiana billing address for the service.
- 19 SECTION 40. IC 36-8-16.5-22 IS AMENDED TO READ AS
- 20 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. The fund consists
- 21 of the following:
- 22 (1) Service charges assessed on CMRS users in the state under
- 23 section 25.5 of this chapter.
- 24 (2) Appropriations made by the general assembly.
- 25 (3) Grants and gifts intended for deposit in the fund.
- 26 (4) Interest, premiums, gains, or other earnings on the fund.
- 27 **(5) Enhanced prepaid wireless charges collected and remitted**
- 28 **under IC 36-8-16.6-11.**
- 29 SECTION 41. IC 36-8-16.5-25.5 IS AMENDED TO READ AS
- 30 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 25.5. (a) As used in this

1 section, "customer" and "place of primary use" have the meanings set
2 forth in IC 6-8.1-15.

3 (b) Except as provided in section 34 of this chapter, the board shall
4 assess a monthly wireless emergency enhanced 911 fee on each ~~CMRS~~
5 **subscriber standard user** that is a customer having a place of primary
6 use in Indiana. A customer's place of primary use shall be determined
7 in the manner provided by IC 6-8.1-15.

8 **(c) The fee assessed under subsection (b) does not apply to a**
9 **prepaid user in a retail transaction under IC 36-8-16.6.**

10 SECTION 42. IC 36-8-16.5-29 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 29. An additional fee
12 relating to the provision of wireless 911 service may not be levied by
13 a state agency or local unit of government. **An enhanced prepaid**
14 **wireless charge (as defined in IC 36-8-16.6-3) is not considered an**
15 **additional fee relating to the provision of wireless 911 service for**
16 **purposes of this section.**

17 SECTION 43. IC 36-8-16.5-30.5 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 30.5. (a) As used in this
19 section, "customer" and "place of primary use" have the meanings set
20 forth in IC 6-8.1-15.

21 (b) Except as provided in section 34 of this chapter, ~~each a~~ CMRS
22 provider shall, **as part of its normal monthly billing process**, collect
23 the wireless emergency enhanced 911 fee assessed under section 25.5
24 of this chapter ~~as follows (1) As part of its normal monthly billing~~
25 ~~process, a CMRS provider shall collect the fee from each standard~~
26 **subscriber user** that is a customer having a place of primary use in
27 Indiana and may list the fee as a separate line item on each bill. A
28 customer's place of primary use shall be determined in the manner
29 provided by IC 6-8.1-15. If a CMRS provider receives a partial
30 payment for a monthly bill from a CMRS standard ~~subscriber, user~~, the
31 CMRS provider shall apply the payment against the amount the CMRS
32 standard ~~subscriber user~~ owes to the CMRS provider before applying
33 the payment against the fee.

34 ~~(2) A CMRS provider shall collect and remit to the board under~~
35 ~~section 36 of this chapter fees from its prepaid subscribers in a~~
36 ~~total amount equal to the fee amount multiplied by the number of~~
37 ~~active prepaid subscriber accounts on the last day of each~~
38 ~~calendar month.~~

39 **(c) This section does not apply to a prepaid user.**

40 SECTION 44 IC 36-8-16.5-31 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 31. A CMRS provider,
42 as part of its monthly billing process, may not pro-rate the monthly
43 wireless emergency enhanced 911 fee collected from ~~the subscriber: a~~
44 **standard user.**

45 SECTION 45. IC 36-8-16.5-32 IS AMENDED TO READ AS
46 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 32. A CMRS provider

1 is not required to take legal action to enforce the collection of the
 2 wireless emergency enhanced 911 fee for which a **subscriber user** is
 3 billed. However, a collection action may be initiated by the board. A
 4 court finding for the board in the action may award reasonable costs
 5 and attorney's fees associated with the collection action.

6 SECTION 46. IC 36-8-16.5-34 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 34. A CMRS number
 8 is exempt from the wireless emergency enhanced 911 fee if the
 9 **subscriber user** is any of the following:

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

15 SECTION 47. IC 36-8-16.5-35, AS AMENDED BY P.L.146-2005,
 16 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2010]: Sec. 35. A CMRS provider may keep seven tenths of
 18 a cent (\$0.007) of the wireless emergency enhanced 911 fee collected
 19 each month from each **subscriber user** for the purpose of defraying the
 20 administrative costs of collecting the fee.

21 SECTION 48. IC 36-8-16.5-39, AS AMENDED BY P.L.146-2005,
 22 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2010]: Sec. 39. (a) Except as provided by section 26 of this
 24 chapter and subsections (b) and (c), the fund must be managed in the
 25 following manner:

- 26 (1) Three cents (\$0.03) of the wireless emergency 911 fee
 27 collected from each **subscriber user** must be deposited in an
 28 escrow account to be used to reimburse:
 - 29 (A) CMRS providers, PSAPs, and the board for costs
 30 associated with implementation of phase two (2) of the FCC
 31 order; and
 - 32 (B) the board for costs associated with other wireless enhanced
 33 911 services mandated by the FCC and specified in the FCC
 34 order but not incurred by CMRS providers or PSAPs.

35 A CMRS provider or a PSAP may recover costs under this
 36 chapter if the costs are incurred before July 1, 2005, and invoiced
 37 to the board not later than December 31, 2005. The board may
 38 invest money in the account in the manner prescribed by section
 39 23 of this chapter and may use the proceeds of the investments to
 40 reimburse CMRS providers and PSAPs under this subdivision.

- 41 (2) At least twenty-five cents (\$0.25) of the wireless emergency
 42 911 fee collected from each **subscriber user** must be deposited in
 43 an escrow account and used to reimburse CMRS providers for the
 44 actual costs incurred by the CMRS providers before July 1, 2005,
 45 in complying with the wireless 911 requirements established by
 46 the FCC order and rules that are adopted by the FCC under the

1 FCC order, including costs and expenses incurred in designing,
2 upgrading, purchasing, leasing, programming, installing, testing,
3 or maintaining all necessary data, hardware, and software
4 required to provide service as well as the costs of operating the
5 service. The board may invest money in the account in the manner
6 prescribed by section 23 of this chapter and may use the proceeds
7 of the investments to reimburse CMRS providers under this
8 subdivision. The CMRS provider may only request funds for true
9 cost recovery. The board may increase the amount held in escrow
10 under this subdivision not more than one (1) time a calendar year.
11 If the board adjusts the wireless emergency 911 fee under section
12 26(a) of this chapter within a calendar year, an adjustment to the
13 amount held in escrow under this subdivision for the calendar
14 year must be made at that time.

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

21 (4) The remainder of the wireless emergency 911 fee collected
22 from each **subscriber user** must be distributed in the following
23 manner:

24 (A) The board shall distribute on a monthly basis to each
25 county containing one (1) or more eligible PSAPs, as
26 identified by the county in the notice required under section 40
27 of this chapter, a part of the remainder based upon the county's
28 percentage of the state's population (as reported in the most
29 recent official United States census). A county must use a
30 distribution received under this clause to make distributions to
31 PSAPs that:

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

34 (ii) accept wireless enhanced 911 service;

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

38 (B) The amount of the fee remaining, if any, after the
39 distributions required under clause (A) must be distributed in
40 equal shares between the escrow accounts established under
41 subdivisions (1) and (2).

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

45 (1) For purposes of acting under this subsection, the board must
46 have a quorum consisting of at least one (1) member appointed

- 1 under section 18(c)(2) of this chapter and at least one (1) member
 2 appointed under section 18(c)(3) of this chapter.
- 3 (2) A transfer under this subsection must be approved by the
 4 affirmative vote of:
- 5 (A) at least fifty percent (50%) of the members present at a
 6 duly called meeting of the board who are appointed under
 7 section 18(c)(2) of this chapter; and
- 8 (B) at least fifty percent (50%) of the members present at a
 9 duly called meeting of the board who are appointed under
 10 section 18(c)(3) of this chapter.
- 11 (3) The board may make transfers only one (1) time during a
 12 calendar year.
- 13 (4) The board may not make a transfer that:
- 14 (A) impairs cost recovery by CMRS providers or PSAPs; or
 15 (B) impairs the ability of the board to fulfill its management
 16 and administrative obligations described in this chapter.
- 17 (c) If all CMRS providers have been reimbursed for their costs
 18 under this chapter, and the fee has been reduced under section 26(c) of
 19 this chapter, the board shall manage the fund in the following manner:
- 20 (1) One cent (\$0.01) of the wireless emergency 911 fee collected
 21 from each ~~subscriber~~ **user** may be used by the board to recover
 22 the board's expenses in administering this chapter. However, the
 23 board may increase this amount at the time the board may adjust
 24 the monthly fee assessed against each ~~subscriber~~ **user** to allow for
 25 full recovery of administration expenses.
- 26 (2) Thirty-eight and three tenths cents (\$0.383) of the wireless
 27 emergency 911 fee collected from each ~~subscriber~~ **user** must be
 28 distributed to each county containing at least one (1) PSAP, as
 29 identified in the county notice required by section 40 of this
 30 chapter. The board shall make these distributions in the following
 31 manner:
- 32 (A) The board shall distribute on a monthly basis to each
 33 eligible county thirty-four and four tenths cents (\$0.344) of the
 34 wireless emergency 911 fee based upon the county's
 35 percentage of the state's population.
- 36 (B) The board shall distribute on a monthly basis to each
 37 eligible county three and nine tenths cents (\$0.039) of the
 38 wireless emergency 911 fee equally among the eligible
 39 counties. A county must use a distribution received under this
 40 clause to reimburse PSAPs that:
- 41 (i) are identified by the county under section 40 of this
 42 chapter as eligible for distributions; and
- 43 (ii) accept wireless enhanced 911 service;
- 44 for actual costs incurred by the PSAPs in complying with the
 45 wireless enhanced 911 requirements established by the FCC
 46 order and rules.

1 (C) The board shall deposit the remainder of the wireless
 2 emergency 911 fee collected from each ~~subscriber~~ **user** into an
 3 escrow account to be used for costs associated with other
 4 wireless enhanced 911 services mandated by the FCC and
 5 specified in the FCC order but not incurred by PSAPs. The
 6 board may invest money in the account in the manner
 7 prescribed by section 23 of this chapter and may use the
 8 proceeds of the investments for costs associated with other
 9 wireless enhanced 911 services mandated by the FCC but not
 10 specified in the FCC order or to make distributions to PSAPs
 11 under this section.

12 (3) If the fee has been reduced under section 26(c) of this chapter,
 13 the board shall determine how money remaining in the accounts
 14 or money for uses described in subsection (a) is to be allocated
 15 into the accounts described in this subsection or used for
 16 distributions under this subsection.

17 This subsection does not affect the transfer provisions set forth in
 18 subsection (b).

19 SECTION 49. IC 36-8-16.5-45 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 45. (a) All proprietary
 21 information submitted to the board or the treasurer of state is
 22 confidential. Notwithstanding any other law, proprietary information
 23 submitted under this chapter is not subject to subpoena, and proprietary
 24 information submitted under this chapter may not be released to a
 25 person other than to the submitting CMRS provider without the
 26 permission of the submitting CMRS provider.

27 (b) General information collected by the board or the treasurer of
 28 state may be released or published only in aggregate amounts that do
 29 not identify or allow identification of numbers of ~~subscribers~~ **users** or
 30 revenues attributable to an individual CMRS provider.

31 SECTION 50. IC 36-8-16.6 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2010]:

34 **Chapter 16.6. Enhanced Prepaid Wireless Telecommunications**
 35 **Service Charge**

36 **Sec. 1. As used in this chapter, "board" refers to the wireless**
 37 **enhanced 911 advisory board established by IC 36-8-16.5-18.**

38 **Sec. 2. As used in this chapter, "consumer" means a person that**
 39 **purchases prepaid wireless telecommunications service from a**
 40 **seller. The term includes a prepaid user.**

41 **Sec. 3. As used in this chapter, "enhanced prepaid wireless**
 42 **charge" means the charge that a seller is required to collect from**
 43 **a consumer under section 11 of this chapter.**

44 **Sec. 4. As used in this chapter, "fund" refers to the wireless**
 45 **emergency telephone system fund established by**
 46 **IC 36-8-16.5-21(a).**

1 **Sec. 5. As used in this chapter, "prepaid user" refers to a user**
2 **of prepaid wireless telecommunications service who:**

3 **(1) is issued an Indiana telephone number or an Indiana**
4 **identification number for the service; or**

5 **(2) purchases prepaid wireless telecommunications service in**
6 **a retail transaction that is sourced to Indiana (as determined**
7 **under IC 6-2.5-12-16).**

8 **Sec. 6. As used in this chapter, "prepaid wireless**
9 **telecommunications service" means a prepaid wireless calling**
10 **service (as defined in IC 6-2.5-1-22.4) that allows a user of the**
11 **service to reach emergency services by dialing the digits nine (9)**
12 **one (1) one (1).**

13 **Sec. 7. As used in this chapter, "provider" means a person or**
14 **entity that offers prepaid wireless telecommunications service.**

15 **Sec. 8. As used in this chapter, "retail transaction" means the**
16 **purchase of prepaid wireless telecommunications service from a**
17 **seller for any purpose other than resale.**

18 **Sec. 9. As used in this chapter, "seller" means a person that sells**
19 **prepaid wireless telecommunications service to another person.**

20 **Sec. 10. (a) The board shall impose an enhanced prepaid**
21 **wireless charge on each retail transaction that occurs after June**
22 **30, 2010. The amount of the initial charge imposed under this**
23 **subsection may not exceed one-half (1/2) of the monthly wireless**
24 **emergency enhanced 911 fee assessed under IC 36-8-25.5.**

25 **(b) Subject to legislative approval, the board may increase the**
26 **enhanced prepaid wireless charge to ensure adequate revenue for**
27 **the board to fulfill its duties and obligations under this chapter,**
28 **IC 36-8-16, and IC 36-8-16.5.**

29 **(c) A consumer that is the federal government or an agency of**
30 **the federal government is exempt from the enhanced prepaid**
31 **wireless charge imposed under this section.**

32 **Sec. 11. (a) A seller shall collect the enhanced prepaid wireless**
33 **charge from the consumer with respect to each retail transaction.**

34 **(b) The seller shall disclose to the consumer the amount of the**
35 **enhanced prepaid wireless charge. The seller may separately state**
36 **the amount of the enhanced prepaid wireless charge on an invoice,**
37 **a receipt, or a similar document that the seller provides to the**
38 **consumer in connection with the retail transaction.**

39 **(c) Subject to section 14 of this chapter, a seller shall remit**
40 **enhanced prepaid wireless charges to the board at the time and in**
41 **the manner prescribed by the board.**

42 **Sec. 12. The enhanced prepaid wireless charge is the liability of**
43 **the consumer and not of the seller or a provider. However, a seller**
44 **is liable to remit to the board all enhanced prepaid wireless**
45 **charges that the seller collects from consumers under section 11 of**
46 **this chapter, including all charges that the seller is considered to**
47 **collect where the amount of the charge has not been separately**

1 stated on an invoice, receipt, or other similar document provided
2 to the consumer by the seller.

3 **Sec. 13.** The amount of the enhanced prepaid wireless charge
4 that is collected by a seller from a consumer, whether or not
5 separately stated on an invoice, receipt, or other similar document
6 provided to the consumer by the seller, may not be included in the
7 base for determining a tax, fee, surcharge, or other charge that is
8 imposed by the state, a political subdivision, or any other
9 governmental agency.

10 **Sec. 14.** A seller may deduct and retain one percent (1%) of
11 enhanced prepaid wireless charges that the seller collects from
12 consumers to reimburse the direct costs incurred by the seller in
13 collecting and remitting enhanced prepaid wireless charges.

14 **Sec. 15. (a)** A seller is subject to the same audit and appeal
15 procedures with respect to the collection and remittance of
16 enhanced prepaid wireless charges as with collection and
17 remittance of the state gross retail tax under IC 6-2.5.

18 **(b)** An audit under subsection (a) must be conducted jointly by
19 the department of state revenue and the board.

20 **Sec. 16. (a)** The board, in conjunction and coordination with the
21 department of state revenue, shall establish procedures:

22 (1) governing the collection and remittance of enhanced
23 prepaid wireless charges in accordance with the procedures
24 established under IC 6-2.5 concerning the collection and
25 remittance of the state gross retail tax; and

26 (2) allowing a seller to document that a sale of prepaid
27 wireless telecommunications service is not a retail transaction.

28 **(b)** A procedure established under subsection (a)(1):

29 (1) must take into consideration the differences between large
30 and small sellers, including smaller sales volumes; and

31 (2) may establish lower thresholds for the remittance of
32 enhanced prepaid wireless charges by small sellers.

33 For purposes of this subsection, a small seller is a seller that sells
34 less than one hundred dollars (\$100) of prepaid wireless
35 telecommunications service each month.

36 **Sec. 17.** The board shall deposit all remitted enhanced prepaid
37 wireless charges in the fund. The board shall administer money
38 deposited in the fund under this subsection in the same manner as
39 wireless emergency enhanced 911 fees assessed under
40 IC 36-8-16.5-25.5.

41 **Sec. 18.** A seller of prepaid wireless telecommunications service
42 is not liable for damages to a person resulting from or incurred in
43 connection with the following:

44 (1) Providing or failing to provide 911 or wireless 911
45 services.

46 (2) Identifying or failing to identify the telephone number,
47 address, location, or name associated with a person or device

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that accesses or attempts to access 911 or wireless 911 service.
(3) Providing lawful assistance to an investigative or law enforcement officer of the United States, a state, or a political subdivision of a state in connection with a lawful investigation or other law enforcement activity by the law enforcement officer.

Sec. 19. (a) An additional fee relating to the provision of wireless 911 service with respect to prepaid wireless telecommunications service may not be levied by a state agency or local unit of government.

(b) The enhanced prepaid wireless charge imposed by section 11 of this chapter is not considered an additional charge relating to the provision of wireless 911 service for purposes of IC 36-8-16.5-29.

Sec. 20. The following are not required to take legal action to enforce the collection of an enhanced wireless 911 charge that is imposed on a consumer:

- (1) A provider.**
- (2) A seller.**

However, the board may initiate a collection action. A court finding for the board in the action may award reasonable costs and attorney's fees associated with the collection action."

Page 46, between lines 14 and 15, begin a new paragraph and insert:
"SECTION 57. IC 36-8-16.5-14 IS REPEALED [EFFECTIVE JULY 1, 2010]."

Re-number all SECTIONS consecutively.
(Reference is to EHB 1086 as printed February 19, 2010.)

Senator HERSHMAN