Adopted	Rejected

COMMITTEE REPORT

YES: 19
NO: 0

MR. SPEAKER:

Your Committee on ***Ways and Means****, to which was referred House Bill 1087, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill* ***be amended*** *as follows:*

Delete the title and insert the following:

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

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-22-2-37.1, AS AMENDED BY P.L.229-2011, SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural

resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 or IC 16-41-2-1 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7 or IC 27-1-12.1.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by or other date provided by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming commission under IC 4-32.2-3-3(b), IC 4-33-4-2, IC 4-33-4-3, IC 4-33-4-14, IC 4-33-22-12, or IC 4-35-4-2.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-17-10-9.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34 (repealed).

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33 (repealed).

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) (repealed) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) (repealed) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(30) A rule adopted by the Indiana finance authority:

(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;

(B) under IC 8-15-2-17.2(a)(10):

(i) establishing enforcement procedures; and

(ii) making assessments for failure to pay required tolls;

(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or

(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.

(31) An emergency rule adopted by the board of the Indiana health informatics corporation under IC 5-31-5-8.

(32) An emergency rule adopted by the department of child services under IC 31-25-2-21, IC 31-27-2-4, IC 31-27-4-2, or IC 31-27-4-3.

(33) An emergency rule adopted by the Indiana real estate commission under IC 25-34.1-2-5(15).

(34) A rule adopted by the department of financial institutions under IC 24-4.4-1-101 and determined necessary to meet an emergency.

(35) An emergency rule adopted by the state board of pharmacy regarding returning unused medication under IC 25-26-23.

(36) An emergency rule adopted by the department of local government finance under IC 6-1.1-12.6 or IC 6-1.1-12.8.

(37) An emergency rule adopted by the office of the secretary of family and social services or the office of Medicaid policy and planning concerning the following:

(A) Federal Medicaid waiver program provisions.

(B) Federal programs administered by the office of the secretary.

(38) An emergency rule adopted by the statewide 911 board under IC 36-8-16.7-37.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall

determine the format of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the publisher for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the format of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the publisher shall:

(1) accept the rule for filing; and

(2) electronically record the date and time that the rule is accepted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

(1) The effective date of the statute delegating authority to the agency to adopt the rule.

(2) The date and time that the rule is accepted for filing under subsection (e).

(3) The effective date stated by the adopting agency in the rule.

(4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), (k), and (l), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

(1) sections 24 through 36 of this chapter; or

(2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(8), (a)(12), (a)(19), (a)(20), (a)(21), (a)(29), ~~or~~ (a)(37), **or (a)(38)** expires on the earlier of the following dates:

(1) The expiration date stated by the adopting agency in the rule.

(2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.

(m) A rule described in subsection (a)(5) or (a)(6) expires on the date the department is next required to issue a rule under the statute authorizing or requiring the rule.

SECTION 2. IC 5-26-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in this article, "system" refers to the Indiana statewide wireless public safety voice and data communications system. The term does not include the ~~enhanced emergency telephone~~ **statewide 911** system **developed and maintained** under ~~IC 36-8-16-2.~~ **IC 36-8-16.7.**

SECTION 3. IC 6-3.5-1.1-25, AS AMENDED BY P.L.172-2011, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 25. (a) As used in this section, "public safety" refers to the following:

(1) A police and law enforcement system to preserve public peace and order.

(2) A firefighting and fire prevention system.

(3) Emergency ambulance services (as defined in IC 16-18-2-107).

(4) Emergency medical services (as defined in IC 16-18-2-110).

(5) Emergency action (as defined in IC 13-11-2-65).

(6) A probation department of a court.

(7) Confinement, supervision, services under a community

corrections program (as defined in IC 35-38-2.6-2), or other correctional services for a person who has been:

(A) diverted before a final hearing or trial under an agreement that is between the county prosecuting attorney and the person or the person's custodian, guardian, or parent and that provides for confinement, supervision, community corrections services, or other correctional services instead of a final action described in clause (B) or (C);

(B) convicted of a crime; or

(C) adjudicated as a delinquent child or a child in need of services.

(8) A juvenile detention facility under IC 31-31-8.

(9) A juvenile detention center under IC 31-31-9.

(10) A county jail.

(11) A communications system (as defined in IC 36-8-15-3) or ~~an enhanced emergency telephone~~ **the statewide 911** system (as defined in ~~IC 36-8-16-2).~~ **IC 36-8-16.7-22).**

(12) Medical and health expenses for jail inmates and other confined persons.

(13) Pension payments for any of the following:

(A) A member of the fire department (as defined in IC 36-8-1-8) or any other employee of a fire department.

(B) A member of the police department (as defined in IC 36-8-1-9), a police chief hired under a waiver under IC 36-8-4-6.5, or any other employee hired by a police department.

(C) A county sheriff or any other member of the office of the county sheriff.

(D) Other personnel employed to provide a service described in this section.

(b) If a county council has imposed a tax rate of at least twenty-five hundredths of one percent (0.25%) under section 24 of this chapter, a tax rate of at least twenty-five hundredths of one percent (0.25%) under section 26 of this chapter, or a total combined tax rate of at least twenty-five hundredths of one percent (0.25%) under sections 24 and 26 of this chapter, the county council may also adopt an ordinance to impose an additional tax rate under this section to provide funding for public safety.

(c) A tax rate under this section may not exceed twenty-five hundredths of one percent (0.25%).

(d) If a county council adopts an ordinance to impose a tax rate under this section, the county auditor shall send a certified copy of the ordinance to the department and the department of local government finance by certified mail.

(e) A tax rate under this section is in addition to any other tax rates imposed under this chapter and does not affect the purposes for which other tax revenue under this chapter may be used.

(f) Except as provided in subsection (k) or (l), the county auditor shall distribute the portion of the certified distribution that is attributable to a tax rate under this section to the county and to each municipality in the county that is carrying out or providing at least one (1) of the public safety purposes described in subsection (a). The amount that shall be distributed to the county or municipality is equal to the result of:

(1) the portion of the certified distribution that is attributable to a tax rate under this section; multiplied by

(2) a fraction equal to:

(A) the attributed allocation amount (as defined in IC 6-3.5-1.1-15) of the county or municipality for the calendar year; divided by

(B) the sum of the attributed allocation amounts of the county and each municipality in the county that is entitled to a distribution under this section for the calendar year.

The county auditor shall make the distributions required by this subsection not more than thirty (30) days after receiving the portion of the certified distribution that is attributable to a tax rate under this section. Tax revenue distributed to a county or municipality under this subsection must be deposited into a separate account or fund and may be appropriated by the county or municipality only for public safety purposes.

(g) The department of local government finance may not require a county or municipality receiving tax revenue under this section to reduce the county's or municipality's property tax levy for a particular year on account of the county's or municipality's receipt of the tax revenue.

(h) The tax rate under this section and the tax revenue attributable

to the tax rate under this section shall not be considered for purposes of computing:

(1) the maximum income tax rate that may be imposed in a county under section 2 of this chapter or any other provision of this chapter;

(2) the maximum permissible property tax levy under IC 6-1.1-18.5-3; or

(3) the credit under IC 6-1.1-20.6.

(i) The tax rate under this section may be imposed or rescinded at the same time and in the same manner that the county may impose or increase a tax rate under section 24 of this chapter.

(j) The department of local government finance and the department of state revenue may take any actions necessary to carry out the purposes of this section.

(k) Two (2) or more political subdivisions that are entitled to receive a distribution under this section may adopt resolutions providing that some part or all of those distributions shall instead be paid to one (1) political subdivision in the county to carry out specific public safety purposes specified in the resolutions.

(l) A fire department, volunteer fire department, or emergency medical services provider that:

(1) provides fire protection or emergency medical services within the county; and

(2) is operated by or serves a political subdivision that is not otherwise entitled to receive a distribution of tax revenue under this section;

may before July 1 of a year apply to the county council for a distribution of tax revenue under this section during the following calendar year. The county council shall review an application submitted under this subsection and may before September 1 of a year adopt a resolution requiring that one (1) or more of the applicants shall receive a specified amount of the tax revenue to be distributed under this section during the following calendar year. A resolution approved under this subsection providing for a distribution to one (1) or more fire departments, volunteer fire departments, or emergency medical services providers applies only to distributions in the following calendar year. Any amount of tax revenue distributed under this subsection to a fire department, volunteer fire department, or

emergency medical services provider shall be distributed before the remainder of the tax revenue is distributed under subsection (f).

SECTION 4. IC 6-3.5-6-31, AS AMENDED BY P.L.172-2011, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 31. (a) As used in this section, "public safety" refers to the following:

(1) A police and law enforcement system to preserve public peace and order.

(2) A firefighting and fire prevention system.

(3) Emergency ambulance services (as defined in IC 16-18-2-107).

(4) Emergency medical services (as defined in IC 16-18-2-110).

(5) Emergency action (as defined in IC 13-11-2-65).

(6) A probation department of a court.

(7) Confinement, supervision, services under a community corrections program (as defined in IC 35-38-2.6-2), or other correctional services for a person who has been:

(A) diverted before a final hearing or trial under an agreement that is between the county prosecuting attorney and the person or the person's custodian, guardian, or parent and that provides for confinement, supervision, community corrections services, or other correctional services instead of a final action described in clause (B) or (C);

(B) convicted of a crime; or

(C) adjudicated as a delinquent child or a child in need of services.

(8) A juvenile detention facility under IC 31-31-8.

(9) A juvenile detention center under IC 31-31-9.

(10) A county jail.

(11) A communications system (as defined in IC 36-8-15-3) or ~~an enhanced emergency telephone~~ **the statewide 911** system (as defined in ~~IC 36-8-16-2).~~ **IC 36-8-16.7-22).**

(12) Medical and health expenses for jail inmates and other confined persons.

(13) Pension payments for any of the following:

(A) A member of the fire department (as defined in IC 36-8-1-8) or any other employee of a fire department.

(B) A member of the police department (as defined in

IC 36-8-1-9), a police chief hired under a waiver under IC 36-8-4-6.5, or any other employee hired by a police department.

(C) A county sheriff or any other member of the office of the county sheriff.

(D) Other personnel employed to provide a service described in this section.

(b) The county income tax council may adopt an ordinance to impose an additional tax rate under this section to provide funding for public safety if:

(1) the county income tax council has imposed a tax rate under section 30 of this chapter, in the case of a county containing a consolidated city; or

(2) the county income tax council has imposed a tax rate of at least twenty-five hundredths of one percent (0.25%) under section 30 of this chapter, a tax rate of at least twenty-five hundredths of one percent (0.25%) under section 32 of this chapter, or a total combined tax rate of at least twenty-five hundredths of one percent (0.25%) under sections 30 and 32 of this chapter, in the case of a county other than a county containing a consolidated city.

(c) A tax rate under this section may not exceed the following:

(1) Five-tenths of one percent (0.5%), in the case of a county containing a consolidated city.

(2) Twenty-five hundredths of one percent (0.25%), in the case of a county other than a county containing a consolidated city.

(d) If a county income tax council adopts an ordinance to impose a tax rate under this section, the county auditor shall send a certified copy of the ordinance to the department and the department of local government finance by certified mail.

(e) A tax rate under this section is in addition to any other tax rates imposed under this chapter and does not affect the purposes for which other tax revenue under this chapter may be used.

(f) Except as provided in subsections (l) and (m), the county auditor shall distribute the portion of the certified distribution that is attributable to a tax rate under this section to the county and to each municipality in the county that is carrying out or providing at least one (1) of the public safety purposes described in subsection (a). The

amount that shall be distributed to the county or municipality is equal to the result of:

(1) the portion of the certified distribution that is attributable to a tax rate under this section; multiplied by

(2) a fraction equal to:

(A) the total property taxes being collected in the county by the county or municipality for the calendar year; divided by

(B) the sum of the total property taxes being collected in the county by the county and each municipality in the county that is entitled to a distribution under this section for the calendar year.

The county auditor shall make the distributions required by this subsection not more than thirty (30) days after receiving the portion of the certified distribution that is attributable to a tax rate under this section. Tax revenue distributed to a county or municipality under this subsection must be deposited into a separate account or fund and may be appropriated by the county or municipality only for public safety purposes.

(g) The department of local government finance may not require a county or municipality receiving tax revenue under this section to reduce the county's or municipality's property tax levy for a particular year on account of the county's or municipality's receipt of the tax revenue.

(h) The tax rate under this section and the tax revenue attributable to the tax rate under this section shall not be considered for purposes of computing:

(1) the maximum income tax rate that may be imposed in a county under section 8 or 9 of this chapter or any other provision of this chapter;

(2) the maximum permissible property tax levy under IC 6-1.1-18.5-3; or

(3) the credit under IC 6-1.1-20.6.

(i) The tax rate under this section may be imposed or rescinded at the same time and in the same manner that the county may impose or increase a tax rate under section 30 of this chapter.

(j) The department of local government finance and the department of state revenue may take any actions necessary to carry out the purposes of this section.

(k) Notwithstanding any other provision, in Lake County the county council (and not the county income tax council) is the entity authorized to take actions concerning the additional tax rate under this section.

(l) Two (2) or more political subdivisions that are entitled to receive a distribution under this section may adopt resolutions providing that some part or all of those distributions shall instead be paid to one (1) political subdivision in the county to carry out specific public safety purposes specified in the resolutions.

(m) A fire department, volunteer fire department, or emergency medical services provider that:

(1) provides fire protection or emergency medical services within the county; and

(2) is operated by or serves a political subdivision that is not otherwise entitled to receive a distribution of tax revenue under this section;

may before July 1 of a year apply to the county income tax council for a distribution of tax revenue under this section during the following calendar year. The county income tax council shall review an application submitted under this subsection and may before September 1 of a year adopt a resolution requiring that one (1) or more of the applicants shall receive a specified amount of the tax revenue to be distributed under this section during the following calendar year. A resolution approved under this subsection providing for a distribution to one (1) or more fire departments, volunteer fire departments, or emergency services providers applies only to distributions in the following calendar year. Any amount of tax revenue distributed under this subsection to a fire department, volunteer fire department, or emergency medical services provider shall be distributed before the remainder of the tax revenue is distributed under subsection (f).

SECTION 5. IC 6-8.1-15-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. (a) Except as provided by section 20 of this chapter, this chapter applies to:

(1) the gross retail tax imposed on mobile telecommunications service under IC 6-2.5-4-6;

(2) the ~~monthly emergency wireless enhanced~~ **statewide** 911 fee imposed on ~~mobile telecommunications~~ **communications** service under ~~IC 36-8-16.5;~~ **IC 36-8-16.7;** and

(3) any other tax, charge, or fee levied by the state or a taxing

jurisdiction within Indiana as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications service, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee;

on bills for mobile telecommunications service issued to customers after July 31, 2002.

(b) This chapter does not apply to:

(1) any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service;

(2) any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis;

(3) any tax, charge, or fee that:

(A) represents compensation for a mobile telecommunications service provider's use of public rights-of-way or other public property; and

(B) is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication service;

(4) any generally applicable business and occupation tax that is imposed by the state, is applied to gross receipts or gross proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this section; or

(5) the determination of the taxing situs of:

(A) prepaid telephone calling service; or

(B) air-ground radiotelephone service as defined in Section 22.99 of Title 47 of the Code of Federal Regulations as in effect June 1, 1999.

SECTION 6. IC 24-5-22-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 10. (a) The following have a right of action against a person who initiates or assists the transmission of a commercial electronic mail message that violates this chapter:

(1) A person who receives the commercial electronic mail

message.

(2) An interactive computer service that handles or retransmits the commercial electronic mail message.

(b) This chapter does not provide a right of action against:

(1) an interactive computer service;

(2) a telephone company; or

(3) a CMRS provider (as defined ~~by IC 36-8-16.5-6);~~ **in IC 36-8-16.7-6);**

whose equipment is used to transport, handle, or retransmit a commercial electronic mail message that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violations of this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

(1) An injunction to enjoin future violations of this chapter.

(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars ($500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 7. IC 34-30-2-156 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 156. ~~IC 36-8-16-18~~

IC 36-8-16.7-42 (Concerning ~~service suppliers or telephone companies~~ **the governmental entities, businesses, institutions, and individuals involved in the statewide 911 system** for loss, death, or injury related to ~~an enhanced emergency telephone~~ **the statewide 911** system).

SECTION 8. IC 35-45-5-4.7, AS AMENDED BY P.L.27-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

(1) an interactive computer service;

(2) a telephone company;

(3) a CMRS provider (as defined in ~~IC 36-8-16.5-6);~~ **IC 36-8-16.7-6);**

(4) a cable operator (as defined in 47 U.S.C. 522(5)); or

(5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

(1) An injunction to enjoin future violations of this chapter.

(2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars ($500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

(A) to the plaintiff; or

(B) through the plaintiff's interactive computer service.

(3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

(1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and

(2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 9. IC 35-51-36-1, AS ADDED BY P.L.70-2011, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. The following statutes define crimes in IC 36:

IC 36-2-2-13 (Concerning county government).
IC 36-2-6-8 (Concerning county government).
IC 36-2-6-12 (Concerning county government).
IC 36-2-7-18 (Concerning county government).
IC 36-2-8-6 (Concerning county government).
IC 36-2-9-13 (Concerning county government).
IC 36-2-9-14 (Concerning county government).
IC 36-2-9.5-7 (Concerning county government).
IC 36-2-9.5-9 (Concerning county government).
IC 36-2-13-5 (Concerning county government).
IC 36-2-14-10 (Concerning county government).
IC 36-2-14-17 (Concerning county government).
IC 36-2-14-21 (Concerning county government).
IC 36-4-8-13 (Concerning government of cities and towns).
IC 36-7-12-27.5 (Concerning planning and development).
IC 36-7-14-40 (Concerning planning and development).
IC 36-7-15.1-27 (Concerning planning and development).
IC 36-7-30-28 (Concerning planning and development).
IC 36-7-30.5-36 (Concerning planning and development).
IC 36-8-3.5-23 (Concerning public safety).
IC 36-8-10-9 (Concerning public safety).
~~IC 36-8-16-16 (Concerning public safety).~~
~~IC 36-8-16.5-47 (Concerning public safety).~~
~~IC 36-8-16.5-48 (Concerning public safety).~~
~~IC 36-8-16.5-49 (Concerning public safety).~~
IC 36-8-16.7-40 (Concerning public safety).

IC 36-8-16.7-43 (Concerning public safety).
IC 36-8-16.7-44 (Concerning public safety).
IC 36-8-16.7-45 (Concerning public safety).
IC 36-9-14-7 (Concerning transportation and public works).
IC 36-10-3-39 (Concerning recreation, culture, and community facilities).
IC 36-10-4-5 (Concerning recreation, culture, and community facilities).
IC 36-10-4-40 (Concerning recreation, culture, and community facilities).

SECTION 10. IC 36-7-4-405 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 405. (a) ADVISORY – AREA. Each plan commission shall:

(1) make recommendations to the legislative body or bodies concerning:

(A) the adoption of the comprehensive plan and amendments to the comprehensive plan;

(B) the adoption or text amendment of:

(i) an initial zoning ordinance;

(ii) a replacement zoning ordinance; and

(iii) a subdivision control ordinance;

(C) the adoption or amendment of a PUD district ordinance (as defined in section 1503 of this chapter); and

(D) zone map changes; and

(2) render decisions concerning and approve plats, replats, and amendments to plats of subdivisions under the 700 series of this chapter.

(b) Each plan commission:

(1) shall assign street numbers to lots and structures;

(2) shall renumber lots and structures; and

(3) if the plan commission does not have the power under an ordinance adopted under subsection (c) to name or rename streets, may recommend the naming and renaming of streets to the executive.

(c) The executive shall name or rename streets. However, a unit may provide by ordinance that the plan commission rather than the executive shall name or rename streets. Streets shall be named or renamed so that their names are easy to understand and to avoid

duplication or conflict with other names. The plan commission may, by rule, prescribe a numbering system for lots and structures.

(d) This subsection applies to a plan commission having jurisdiction in a county with a population of at least four hundred thousand (400,000). The plan commission shall number structures on highways within the plan commission's jurisdiction to conform with the numbers of structures on streets within cities in the county.

(e) This subsection applies to unincorporated areas subject to the jurisdiction of no plan commission under this article. The county executive:

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(f) This subsection applies to areas located within a municipality that are subject to the jurisdiction of no plan commission under this article. The executive of the municipality:

(1) must approve the assignment of street numbers to lots and structures; and

(2) may number or renumber lots and structures and name or rename streets.

(g) An executive acting under subsection (e) or (f) shall name or rename streets:

(1) so that their names are easy to understand; and

(2) to avoid duplication or conflict with other names.

(h) If streets are named or renamed or lots and structures are numbered or renumbered under this section, the commission or executive that makes the naming or numbering decision shall notify:

(1) the circuit court clerk or board of registration;

(2) the ~~administrator of the enhanced emergency telephone system established under IC 36-8-16 if any;~~ **statewide 911 board established by IC 36-8-16.7-24;**

(3) the United States Postal Service; and

(4) any person or body that the commission or executive considers appropriate to receive notice;

of its action no later than the last day of the month following the month in which the action is taken.

(i) Each plan commission shall make decisions concerning

development plans and amendments to development plans under the 1400 series of this chapter, unless the responsibility to render decisions concerning development plans has been delegated under section 1402(c) of this chapter.

SECTION 11. IC 36-8-16 IS REPEALED [EFFECTIVE JULY 1, 2012]. (Emergency Telephone System Fee).

SECTION 12. IC 36-8-16.5 IS REPEALED [EFFECTIVE JULY 1, 2012]. (Enhanced Wireless Emergency Telephone Service).

SECTION 13. IC 36-8-16.6-1, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. As used in this chapter, "board" refers to the ~~wireless enhanced~~ **statewide** 911 ~~advisory~~ board established by ~~IC 36-8-16.5-18.~~ **IC 36-8-16.7-24.**

SECTION 14. IC 36-8-16.6-5, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. As used in this chapter, "fund" refers to the ~~wireless emergency telephone system~~ **statewide 911** fund established by ~~IC 36-8-16.5-21(a).~~ **IC 36-8-16.7-29.**

SECTION 15. IC 36-8-16.6-11, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 11. (a) Subject to section 22 of this chapter, the board shall impose an enhanced prepaid wireless charge on each retail transaction that occurs after June 30, 2010. The amount of the ~~initial~~ charge imposed under this subsection ~~may not exceed one-half (1/2) of~~ **is equal to** the monthly ~~wireless emergency enhanced~~ **statewide** 911 fee assessed under ~~IC 36-8-16.5-25.5.~~ **IC 36-8-16.7-32.**

(b) ~~Subject to legislative approval,~~ The board may ~~increase~~ **adjust** the enhanced prepaid wireless charge ~~to ensure adequate revenue for the board to fulfill its duties and obligations under this chapter IC 36-8-16, and IC 36-8-16.5.~~ **for inflation under IC 36-8-16.7-32.**

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

SECTION 16. IC 36-8-16.6-18, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 18. (a) The department shall deposit all remitted enhanced prepaid wireless charges in the fund.

(b) The board shall administer money deposited in the fund under

this section in the same manner as ~~wireless emergency enhanced~~ **it administers statewide** 911 fees assessed under ~~IC 36-8-16.5-25.5.~~ **IC 36-8-16.7-32.**

SECTION 17. IC 36-8-16.6-20, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 20. (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 12 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.~~ **IC 36-8-16.7-32(b).**

SECTION 18. IC 36-8-16.6-22, AS ADDED BY P.L.113-2010, SECTION 151, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 22. ~~(a) Not later than January 1, 2011, the department shall determine the total amount of fees collected and remitted under IC 36-8-16.5-30.5 (b)(2) (as effective in the period beginning July 1, 2008, and ending June 30, 2010) for the period beginning July 1, 2008, and ending June 30, 2010. The board shall provide all information necessary for the department to perform its duties under this subsection.~~

~~(b) Not later than January 1, 2013, the department shall determine the total amount of fees collected and remitted under this chapter for the period beginning July 1, 2010, and ending June 30, 2012.~~

~~(c) If the amount determined under subsection (b) is less than the amount determined under subsection (a) by more than five percent (5%),~~ This chapter expires and sunsets July 1, ~~2013.~~ **2017.**

SECTION 19. IC 36-8-16.7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]:

Chapter 16.7. Statewide 911 Services

Sec. 1. As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

Sec. 2. As used in this chapter, "automatic location information" means information that is transmitted while enhanced 911 service is provided and that permits emergency

service providers to identify the geographic location of the calling party.

Sec. 3. As used in this chapter, "automatic number identification" has the meaning set forth in 47 CFR 20.3.

Sec. 4. As used in this chapter, "board" refers to the statewide 911 board established by section 24 of this chapter.

Sec. 5. As used in this chapter, "CMRS" refers to commercial mobile radio service (as defined in 47 CFR 20.3).

Sec. 6. As used in this chapter, "CMRS provider" means a person that offers CMRS to users in Indiana.

Sec. 7. (a) As used in this chapter, "communications service" means any service that:

(1) uses telephone numbers or IP addresses or their functional equivalents or successors;

(2) is capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the 911 system, regardless of the device, transmission medium, or technology employed;

(3) provides or enables real time or interactive communications; and

(4) is available to a prepaid user or a standard user.

(b) The term includes the following:

(1) Internet protocol enabled services and applications that are provided through wireline, cable, wireless, or satellite facilities, or any other facility or platform that is capable of connecting a 911 communication to a PSAP.

(2) A multiline telephone system.

(3) CMRS.

(4) Interconnected VOIP service and voice over power lines.

(5) Integrated telecommunications service (as defined in 47 CFR 400.2).

Sec. 8. (a) As used in this chapter, except as provided in subsection (b), "customer" means:

(1) the person or entity that contracts with a provider for communications service; or

(2) if the end user of communications service is not the contracting party, the end user of the communications service.

However, subdivision (2) applies only for the purpose of

determining the place of primary use.

(b) The term does not include:

(1) a reseller of communications service; or

(2) a provider other than the customer's provider that has an arrangement with the customer's provider to serve the customer outside the licensed service area of the customer's provider.

Sec. 9. (a) As used in this chapter, "enhanced 911 service" means a communications service that uses the three (3) digit number 911 to send automatic number identification and automatic location information for reporting police, fire, medical, or other emergency situations.

(b) The term includes both Phase I and Phase II enhanced 911 services, as described in 47 CFR 20.18.

Sec. 10. As used in this chapter, "executive director" refers to the executive director of the board.

Sec. 11. (a) As used in this chapter, "FCC order" refers to the order of the Federal Communications Commission, FCC Docket No. 94-102, adopted June 12, 1996, with an effective date of October 1, 1996.

(b) The term includes any rules, regulations, and consent decrees adopted by the Federal Communications Commission to implement the order described in subsection (a).

Sec. 12. As used in this chapter, "fund" refers to the statewide 911 fund established by section 29 of this chapter.

Sec. 13. As used in this chapter, "interconnected VOIP service" has the meaning set forth in 47 CFR 9.3.

Sec. 14. As used in this chapter, "local exchange carrier" has the meaning set forth in 47 U.S.C. 153.

Sec. 15. As used in this chapter, "multiline telephone system" means a voice communications service system that includes the following:

(1) Common control units.

(2) Telephone sets.

(3) Control hardware and software.

(4) Adjunct systems.

The term includes network and premises based systems as classified by FCC Part 68 (47 CFR part 68) Requirements.

Sec. 16. As used in this chapter, "place of primary use" means the street address representative of where a customer's use of communications service primarily occurs, which must be:

(1) the residential street address or the primary business street address of the customer; and

(2) within the licensed service area of the customer's provider.

Sec. 17. As used in this chapter, "prepaid user" has the meaning set forth in IC 36-8-16.6-6.

Sec. 18. As used in this chapter, "proprietary information" includes the following:

(1) Customer lists and related information.

(2) Technology descriptions, technical information, or trade secrets (as defined in IC 24-2-3-2).

(3) Information that:

(A) concerns the actual or developmental costs of 911 systems; and

(B) is developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

Sec. 19. (a) As used in this chapter, "provider" means a person or entity, or an affiliate of a person or an entity, that:

(1) offers communications service to users in Indiana; and

(2) provides, or is required by the Federal Communications Commission to provide, a user with direct access to a PSAP through the placement of a 911 communication.

(b) The term includes the following:

(1) Facilities based and nonfacilities based resellers of communications service.

(2) Any other provider of communications service through wireline or wireless means, regardless of whether the provider is subject to regulation by the Indiana utility regulatory commission.

Sec. 20. As used in this chapter, "PSAP" refers to a public safety answering point:

(1) that operates on a twenty-four (24) hour basis; and

(2) whose primary function is to receive incoming requests for emergency assistance and relay those requests to an appropriate responding public safety agency.

Sec. 21. As used in this chapter, "standard user" or "user" refers to a communications service user who pays retrospectively for the service and has an Indiana billing address for the service.

Sec. 22. (a) As used in this chapter, "statewide 911 system" means a communications system that uses the three (3) digit number 911 to send automatic number identification and automatic location information or their functional equivalents or successors for reporting police, fire, medical, or other emergency situations.

(b) The term includes the following:

(1) A wireline enhanced emergency telephone system funded under IC 36-8-16 (before its repeal on July 1, 2012).

(2) A wireless 911 emergency telephone system funded under IC 36-8-16.5 (before its repeal on July 1, 2012).

Sec. 23. As used in this chapter, "VOIP provider" means a provider that offers interconnected VOIP service to users in Indiana.

Sec. 24. (a) The statewide 911 board is established to develop, implement, and oversee the statewide 911 system. 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 for the purposes of subsection (c):

(1) The executive committees of:

(A) the Indiana chapter of the National Emergency Number Association (NENA); and

(B) the Indiana chapter of the Association of Public Safety Communications Officials International (APCO);

shall jointly recommend one (1) individual.

(2) The CMRS providers authorized to provide CMRS in Indiana shall jointly recommend two (2) individuals.

(3) The Indiana Association of County Commissioners shall recommend one (1) individual.

(4) The Indiana Sheriffs' Association shall recommend one (1) individual.

(5) The Indiana Telecommunications Association shall recommend two (2) individuals as follows:

(A) One (1) individual representing a local exchange carrier that serves less than fifty thousand (50,000) local exchange access lines in Indiana.

(B) One (1) individual representing a local exchange carrier that serves at least fifty thousand (50,000) local exchange access lines in Indiana.

(6) The Indiana Cable Telecommunications Association shall recommend one (1) individual.

(7) The Association of Indiana Counties shall recommend one (1) individual who is a member of a county council.

(8) The Indiana Association of Cities and Towns shall recommend one (1) individual who represents a municipality that operates a PSAP.

(c) The board consists of the following thirteen (13) 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.

(2) One (1) member for a term of three (3) years who is appointed by the governor after considering the recommendations submitted under subsection (b)(1) by the executive committees of NENA and APCO. A member appointed under this subdivision must have budget experience at the local level.

(3) Two (2) CMRS members who are appointed by the governor after considering the recommendations submitted under subsection (b)(2) by the CMRS providers authorized to provide CMRS in Indiana. A member appointed under this subdivision may not be affiliated with the same business entity as a member appointed under subdivision (6) or (7).

(4) One (1) county commissioner member appointed by the governor after considering the recommendation submitted under subsection (b)(3) by the Indiana Association of County Commissioners.

(5) One (1) member appointed by the governor after considering the recommendation submitted under subsection (b)(4) by the Indiana Sheriffs' Association.

(6) One (1) local exchange carrier member appointed by the governor after considering the recommendation of the Indiana Telecommunications Association under subsection (b)(5)(A). A member appointed under this subdivision may not be affiliated with the same business entity as a member appointed under subdivision (3) or (7).

(7) One (1) local exchange carrier member that serves at least fifty thousand (50,000) local exchange access lines in Indiana appointed by the governor after considering the recommendation of the Indiana Telecommunications Association under subsection (b)(5)(B). A member appointed under this subdivision may not be affiliated with the same business entity as a member appointed under subdivision (3), (6), or (8).

(8) One (1) VOIP provider who is appointed by the governor after considering the recommendation of the Indiana Cable Telecommunications Association under subsection (b)(6). A member appointed under this subdivision may not be affiliated with the same business entity as a member appointed under subdivision (3) or (6).

(9) One (1) member appointed by the governor after considering the recommendation submitted under subsection (b)(7) by the Association of Indiana Counties.

(10) One (1) member appointed by the governor after considering the recommendation submitted under subsection (b)(8) by the Indiana Association of Cities and Towns.

(11) The superintendent of the state police department or the superintendent's designee.

(12) The state fire marshal or the state fire marshal's designee.

(d) This subsection applies to a member appointed by the governor under subsection (c)(2) through (c)(10). The governor shall ensure that the terms of the initial members appointed by the governor are staggered so that the terms of not more than five (5) members expire in a single calendar year. After the initial appointments, subsequent appointments shall be for three (3) year terms. A vacancy on the board shall be filled for the vacating member's unexpired term in the same manner as the original

appointment, and a member of the board is eligible for reappointment. In making an appointment under subsection (c)(2) through (c)(10), the governor shall take into account the various geographical areas of Indiana, including rural and urban areas. A member appointed by the governor serves at the pleasure of the governor.

(e) A member or a designee must be a resident of Indiana.

Sec. 25. A majority of the members of the board constitutes a quorum for purposes of taking action.

Sec. 26. (a) Each member of the board who is not a state employee is not entitled to receive the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee is entitled to reimbursement for travel expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 27. The board may do the following to implement this chapter:

(1) Sue and be sued.

(2) Adopt and alter an official seal.

(3) Adopt and enforce bylaws and rules for:

(A) the conduct of board business; and

(B) the use of board services and facilities.

(4) Enter into contracts, including contracts:

(A) for professional services;

(B) for purchase of supplies or services; and

(C) to acquire office space.

(5) Hire staff.

(6) Adopt rules under IC 4-22-2 to implement this chapter.

(7) Develop, maintain, and update a statewide 911 plan.

(8) Administer the statewide 911 fund established by section

29 of this chapter.

(9) Administer and distribute the statewide 911 fee in accordance with section 37 of this chapter.

(10) Take other necessary or convenient actions to implement this chapter that are not inconsistent with Indiana law.

(11) Obtain from each PSAP operating statistics and other performance measurements, including call statistics by category and emergency medical dispatch certifications.

(12) Adopt an annual budget governing the board's activities under this chapter.

Sec. 28. (a) The board shall appoint an executive director of the board to do the following:

(1) Administer, manage, and direct employees of the board.

(2) Approve the salaries of the employees of the board.

(3) Attend board meetings and record all proceedings of the board. However, the executive director is not considered a member of the board for any purpose, including voting or establishing a quorum.

(4) Maintain books, documents, and papers filed with the board, including minutes.

(5) Perform other duties as directed by the board.

(b) The board shall determine the salary and other compensation of the executive director.

(c) An executive director appointed under subsection (a) must have at least three (3) years executive experience with a 911 system.

Sec. 29. (a) The statewide 911 fund is established for the purposes of creating and maintaining a uniform statewide 911 system. The board shall administer the fund. The expenses of administering the fund must be paid from money in the fund.

(b) The fund consists of the following:

(1) The statewide 911 fee assessed on users under section 32 of this chapter.

(2) Appropriations made by the general assembly.

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

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

(5) Enhanced prepaid wireless charges collected and remitted under IC 36-8-16.6-12.

(6) Money from any other source that is deposited in or transferred to the fund.

(c) The board may invest money in the fund in the same manner as other funds of the state may be invested under IC 5-13. In addition, the board may invest money in the fund in any of the following:

(1) Corporate bonds, notes, and debentures, subject to the following conditions:

(A) Maximum participation in any issue is limited to seven percent (7%) of the total issue.

(B) The board shall establish minimum quality rating standards and maximum purchase amount standards for corporate issues.

(2) Investments maturing in one (1) year or less, subject to the following conditions:

(A) The investments must be:

(i) prime-1 commercial paper; and

(ii) banker's acceptance approved by banks' trust investment committees.

(B) The maximum amount invested may not exceed fifty percent (50%) of the fund.

(d) Whenever the quality, maturity, and yield of an investment in an Indiana corporation or in a corporation that does business in Indiana are equal to or better than similar investments in other corporations, preference shall be given to an investment in the Indiana corporation or in the corporation that does business in Indiana.

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, the balance of the fund may not exceed two million five hundred thousand dollars ($2,500,000) at the end of a state fiscal year. The board shall distribute to the PSAPs the amount of any excess balance before September 15 of the following state fiscal year. The distributions required by this subsection must be made in accordance with the distribution formula established under section 37 of this chapter. Any distributions made under this subsection are in addition to the distributions required by section 37 of this chapter. Money received under this subsection must be used in accordance with

section 38 of this chapter.

(f) Money in the fund is continuously appropriated for the purposes of the fund.

Sec. 30. (a) The board shall select a third party to audit the fund on an annual basis to determine whether the fund is being managed in accordance with this chapter.

(b) Each year, the board shall review 911 service in Indiana, including the collection, disbursement, and use of the statewide 911 fee assessed under section 32 of this chapter. The purpose of the review is to ensure that the statewide 911 fee:

(1) does not exceed the amount reasonably necessary to provide adequate and efficient 911 service; and

(2) is used only for the purposes set forth in this chapter.

Sec. 31. The board may retain an independent, third party accounting firm or fiscal agent for purposes of processing checks and distributing funds as directed by the board and as allowed by this chapter. The board shall pay for these services as an administrative cost of the board.

Sec. 32. (a) Except as provided in subsection (c), the board shall assess a monthly statewide 911 fee of seventy-five cents ($0.75) on each user that is a customer having a place of primary use (as defined in section 16 of this chapter, and as determined in the manner provided by IC 6-8.1-15) in Indiana.

(b) An additional fee relating to the provision of 911 service may not be levied by a state agency or local unit of government. An enhanced prepaid wireless charge (as defined in IC 36-8-16.6-4) is not considered an additional fee relating to the provision of 911 service for purposes of this section.

(c) A user is exempt from the statewide 911 fee if the user 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.

Sec. 33. (a) As part of the provider's normal monthly billing process, a provider:

(1) shall collect the fee from each standard user that is a

customer having a place of primary use in Indiana, as determined in the manner provided by IC 6-8.1-15; and

(2) may list the fee as a separate line item on each bill.

If a provider receives a partial payment for a monthly bill from a standard user, the provider shall apply the payment against the amount the standard user owes to the provider before applying the payment against the fee. A provider may not prorate the monthly statewide 911 fee collected from a user.

(b) Subject to subsection (c), a provider shall remit statewide 911 fees collected under this section to the board at the time and in the manner prescribed by the board. The board shall deposit all remitted statewide 911 fees in the fund.

(c) A provider may deduct and retain an amount not to exceed one percent (1%) of statewide 911 fees that the provider collects from users to reimburse the direct costs incurred by the provider in collecting and remitting statewide 911 fees.

Sec. 34. The statewide 911 fee is the liability of the user and not of a provider. However, a provider is liable to remit to the board all statewide 911 fees that the provider collects from users.

Sec. 35. The amount of a statewide 911 fee that is collected by a provider from a user, whether separately stated on an invoice, receipt, or other document, may not be included in the base for measuring any tax, surcharge, or other charge that is imposed by the state, a political subdivision, or other government agency.

Sec. 36. A provider is not required to take legal action to enforce the collection of the 911 fee for which a user is billed. 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.

Sec. 37. (a) The board shall administer the fund in the following manner:

(1) The board may retain in each state fiscal year the lesser of:

(A) seven percent (7%) of the statewide 911 fees deposited in the fund in that state fiscal year; or

(B) five million six hundred thousand dollars ($5,600,000);

to pay the board's expenses in administering this chapter and to develop, operate, and maintain a statewide 911 system. The board may decrease the amount of fees retained by the board.

(2) The board shall distribute the remainder of the statewide 911 fees deposited in the fund to each PSAP in accordance with a distribution formula established under subsection (b).

(3) In determining distribution amounts for the state fiscal year beginning July 1, 2012, the board shall consider the amount of 911 fee revenue received by each PSAP during the state fiscal year ending June 30, 2012.

(b) After review by the budget committee, the board shall adopt an emergency rule before September 15, 2012, to establish a distribution formula. The formula must be included in a later rule adopted by the board under IC 4-22-2-24 through IC 4-22-2-36.

(c) The board shall publish the formula established under this section on the board's Internet web site.

(d) The board shall annually reexamine the distribution formula to ensure that revenue is equitably distributed among the PSAPs operated in Indiana.

Sec. 38. (a) A PSAP may use a distribution under section 37(a)(2) of this chapter only for the following:

(1) The lease, purchase, or maintenance of enhanced emergency telecommunications equipment, including necessary computer hardware, software, and data base provisioning.

(2) The rates associated with the service suppliers' enhanced emergency telecommunications system network services.

(3) Personnel expenses, including wages, benefits, training, and continuing education.

(4) Operational costs, including costs associated with:

(A) utilities;

(B) maintenance;

(C) equipment designed to provide backup power or system redundancy, including generators; and

(D) call logging equipment.

(5) Connectivity to the Indiana data communications system (IDACS).

(b) A PSAP may not use a distribution under section 37(a)(2) of this chapter for the following:

(1) Vehicles.

(2) Mobile radio equipment.

(3) Portable communications equipment, not directly connected to the statewide 911 system.

(c) Not later than January 31 of each year, each PSAP shall submit to the board a report of all expenditures made during the immediately preceding calendar year from distributions under sections 29(e) and 37(a)(2) of this chapter.

(d) Beginning July 1, 2013, the state board of accounts annually shall audit the expenditures of distributions under sections 29(e) and 37(a)(2) of this chapter made during the immediately preceding calendar year by each PSAP that receives distributions under sections 29(e) and 37(a)(2) of this chapter. In conducting an audit under this subsection, the state board of accounts shall determine, in conjunction with the board, whether the expenditures made by each PSAP are in compliance with subsections (a) and (b).

Sec. 39. (a) In cooperation with the board, a provider shall designate a person to coordinate with and provide all relevant information to the board to assist the board in carrying out its duties under this chapter.

(b) A provider shall provide the automatic number identification and any other information, including updates, required by the board to the county, the municipality, an authorized agent of a county or municipality, or the board or the board's authorized agent for purposes of establishing and maintaining a 911 system data base. The board may use confidential information received under this subsection solely for the purpose of providing statewide 911 service.

Sec. 40. (a) A provider shall, upon request, provide to a PSAP the necessary user data to enable the PSAP to implement and operate a 911 system. User data provided to a PSAP for the purpose of implementing or updating a 911 system:

(1) may be used only to identify:

(A) a user;

(B) a user's place of primary use (as determined in the manner provided by IC 6-8.1-15); or

(C) the information described in both subdivisions (1) and (2); and

(2) may not be used or disclosed by the PSAP, or its agents or

employees, for any other purpose unless the data is used or disclosed under a court order.

A person who recklessly, knowingly, or intentionally violates this subsection commits a Class A misdemeanor.

(b) After May 31, 1988, a contract entered into between a provider and a user who has an unlisted or nonpublished telephone number (or other functionally equivalent identification number) may not include a provision that prohibits the provider from providing the user's telephone number (or other functionally equivalent identification number) to a PSAP for inclusion in a 911 system data base. A provider (other than a provider who, before June 1, 1988, has contracted to not divulge a subscriber's unlisted or nonpublished telephone number (or other functionally equivalent identification number)) shall provide a requesting PSAP with the name, telephone number (or other functionally equivalent identification number), and place of primary use (as determined in the manner provided by IC 6-8.1-15) for each user of the provider. A PSAP may not release a telephone number (or other functionally equivalent identification number) required to be provided under this subsection to any person except as provided in subsection (a).

(c) A provider may amend or terminate a contract with a user if:

(1) the contract contains a provision that prohibits the provider from providing the user's telephone number (or other functionally equivalent identification number) to a PSAP for inclusion in a 911 system data base;

(2) the exclusion of the telephone number (or other functionally equivalent identification number) from the data base would negate the purpose of this chapter; and

(3) the user is notified of the proposed amendment or termination of a contract at least one hundred eighty (180) days before the provider takes action.

Sec. 41. (a) All proprietary information submitted to the board or the treasurer of state is confidential. Notwithstanding any other law, proprietary information submitted under this chapter is not subject to subpoena, and proprietary information submitted under this chapter may not be released to a person other than to the submitting provider without the permission of the submitting

provider.

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

Sec. 42. Notwithstanding any other law:

(1) the board;

(2) a PSAP;

(3) a political subdivision;

(4) a provider;

(5) an employee, director, officer, or agent of a PSAP, a political subdivision, or a provider; or

(6) an employee or member of the board, the board chair, the executive director, or an employee, agent, or 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, maintaining, operating, and providing 911 service, except in the case of willful or wanton misconduct.

Sec. 43. (a) A person may not use 911 service except to make emergency calls that may result in the dispatch of the appropriate response for fire suppression and rescue, emergency medical or ambulance services, hazardous material, disaster or major emergency occurrences, and law enforcement activities.

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

Sec. 44. (a) This section does not apply to a person that connects to a 911 network using automatic crash notification technology subject to an established protocol.

(b) A person may not connect to a 911 network an automatic alarm, automatic dialer, or other automated alerting device that:

(1) causes the number 911 to be automatically dialed; or

(2) provides through a prerecorded message information regarding obtaining 911 emergency service.

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

Sec. 45. A person who knowingly or intentionally places a 911

call:

(1) for a purpose other than obtaining public safety assistance or emergency services; or

(2) to avoid communications service charges or fees;

commits a Class A misdemeanor.

Sec. 46. (a) For purposes of this section, a PSAP includes a public safety communications system operated and maintained under IC 36-8-15.

(b) As used in this section, "PSAP operator" means:

(1) a political subdivision; or

(2) an agency;

that operates a PSAP. The term does not include any entity described in subsection (c)(1) through (c)(3).

(c) Subject to subsection (d), after December 31, 2014, a county may not contain more than two (2) PSAPs. However, a county may contain one (1) or more PSAPs in addition to the number of PSAPs authorized by this section, as long as any additional PSAPs are operated:

(1) by a state educational institution;

(2) by an airport authority established for a county having a consolidated city; or

(3) in a county having a consolidated city, by an excluded city (as defined in IC 36-3-1-7).

(d) This subsection applies to a county that:

(1) on March 15, 2008, contained fewer than two (2) PSAPs, not including a PSAP operated by an entity described in subsection (c)(1) through (c)(3); and

(2) has not had an additional PSAP established within the county by the municipality having the largest population in the county or an agency of that municipality since March 15, 2008.

An additional PSAP may not be established and operated in the county unless the additional PSAP is established and operated by a state educational institution, an airport authority established for the county in a county containing a consolidated city, or the municipality having the largest population in the county or an agency of that municipality.

(e) Before January 1, 2015, each PSAP operator in a county that

contains more than the number of PSAPs authorized by subsection (c) shall enter into an interlocal agreement under IC 36-1-7 with every other PSAP operator in the county to ensure that the county does not contain more than the number of PSAPs authorized by subsection (c) after December 31, 2014.

(f) An interlocal agreement required under subsection (e) may include as parties, in addition to the PSAP operators required to enter into the interlocal agreement under subsection (e), any of the following that seek to be served by a county's authorized PSAPs after December 31, 2014:

(1) Other counties contiguous to the county.

(2) Other political subdivisions in a county contiguous to the county.

(3) Other PSAP operators in a county contiguous to the county.

(g) An interlocal agreement required under subsection (e) must provide for the following:

(1) A plan for the:

(A) consolidation;

(B) reorganization; or

(C) elimination;

of one (1) or more of the county's PSAPs, as necessary to ensure that the county does not contain more than the number of PSAPs authorized by subsection (c) after December 31, 2014.

(2) A plan for funding and staffing the PSAP or PSAPs that will serve:

(A) the county; and

(B) any areas contiguous to the county, if additional parties described in subsection (f) participate in the interlocal agreement;

after December 31, 2014.

(3) Subject to any applicable state or federal requirements, protocol to be followed by the county's PSAP or PSAPs in:

(A) receiving incoming 911 calls; and

(B) dispatching appropriate public safety agencies to respond to the calls;

after December 31, 2014.

(4) Any other matters that the participating PSAP operators or parties described in subsection (f), if any, determine are necessary to ensure that the county does not contain more than the number of PSAPs authorized by subsection (c) after December 31, 2014.

(h) This section may not be construed to require a county to contain a PSAP.

Sec. 47. Before August 1, 2013, and each year thereafter, the board shall annually report to the budget committee on the following:

(1) The expenses incurred by the board in carrying out its duties under this chapter.

(2) The total amount of fees deposited in the fund during the most recent state fiscal year.

(3) The total amount of fees distributed to PSAPs during the most recent state fiscal year.

(4) The board's annual analysis of the distribution formula established under section 37 of this chapter.

Sec. 48. This chapter expires July 1, 2017.

SECTION 20. IC 36-8-21 IS REPEALED [EFFECTIVE JULY 1, 2012]. (Emergency Telephone Notification System).

SECTION 21. [EFFECTIVE UPON PASSAGE] **(a) The funds that remain in the wireless emergency telephone system fund established by IC 36-8-16.5-21 (before its repeal by this act on July 1, 2012) on July 1, 2012, shall be transferred to the statewide 911 fund established by IC 36-8-16.7-29, as added by this act.**

(b) This SECTION expires January 1, 2013.

SECTION 22. **An emergency is declared for this act.**

(Reference is to HB 1087 as introduced.)

and when so amended that said bill do pass.

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Representative Espich