

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-439
HOUSE BILL 1261**

AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE SERVICE, TO CLARIFY THE AUTHORIZED EXPENDITURES FROM THE EMERGENCY TELEPHONE SYSTEM FUND, TO CAP WIRE 911 SERVICE CHARGES, AND TO STUDY ISSUES RELATED TO ARTICLE 1 OF CHAPTER 62A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-21 reads as rewritten:

"§ 62A-21. Definitions.

As used in this Article:

- (1) "Active prepaid wireless telephone service" means a prepaid wireless telephone service that has been used by the customer during the month to complete a telephone call for which the customer's card or balance was decremented.
- (4) (1a) "Automatic location identification" or "ALI" means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.
- ...
- (5) "CMRS provider" means a person or ~~entity~~ entity, facilities-based and nonfacilities-based, who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- ...
- (7a) "GIS mapping" means the development of a computerized geographical display system of roads and structures where emergency response may be required.
- ...
- (9) "Mobile set telephone number" means the number assigned to a CMRS ~~connection~~ connection, including the 10-digit number assigned to a CMRS mobile phone.
- (9a) "Prepaid wireless telephone service" means wireless telephone service for which no monthly invoices are received, that is activated in advance by payment for a finite dollar amount of service or for a finite set of minutes that terminate either upon use by a customer and delivery by a CMRS provider or reseller of an agreed upon amount of

service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation unless additional payments are made.

...

(11a) "Primary PSAP" means the first point of reception of a 911 call by a public safety answering point.

(12) "Pseudoautomatic number identification" or "Pseudo-ANI" means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell ~~face~~, face and is used to identify the approximate location of a wireless caller.

...

(13a) "Shared resources" means any element that is used for both receiving wire line 911 calls and wireless 911 calls and is an eligible expense under G.S. 62A-8 and G.S. 62A-25.

(13b) "Subscriber" means a person who subscribes to a CMRS service or prepaid wireless service.

(14) "Wireless 911 system" means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911-911 and complements a wireless Enhanced 911 system.

...

(15a) "Wireless Enhanced 911 State plan" means a document prepared, maintained, and updated by the Wireless 911 Board that provides for all aspects of the State's integrated wireless Enhanced 911 system, including the Board's determination of permitted uses of moneys from the Wireless Fund and the amounts disbursed from the Fund to CMRS providers and PSAPs.

...."

SECTION 2. G.S. 62A-22 reads as rewritten:

"§ 62A-22. Wireless 911 Board.

(a) There is created a Wireless 911 Board ("Board"), consisting of 13 members as follows:

- (1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;
- (2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);
- (3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of

whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and

- (4) The State Chief Information Officer or the Chief Information Officer's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Members shall remain in office until their successors are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the original appointment.

(b1) G.S. 14-234 shall apply to members, officers, and employees of the Board. Members, officers, and employees of the Board shall disclose any interest, direct or indirect, they have in any firm or corporation interested in contracting with the Board, and the nature of that interest shall be included in the Board's minutes. A member, officer, or employee of the Board shall not participate in decisions involving parties with whom they have a conflict of interest.

(b2) The Governor may remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d).

...."

SECTION 3. Article 2 of Chapter 62A is amended by adding the following new section to read:

"§ 62A-22.1. Powers and duties of the Board.

The Wireless 911 Board shall have the following powers and duties:

- (1) To levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The service charge is not a tax.
- (2) To make and enter into contracts and agreements necessary or incidental to the performance of its duties and powers under this Article, including purchase agreements that are paid with funds from the administrative fee allowed under G.S. 62A-26 and other moneys appropriated to or received by the Board for the wireless Enhanced 911 system.
- (3) To accept gifts, grants, or other moneys for purposes of furthering the intent of this Article.
- (4) To develop a comprehensive wireless Enhanced 911 telecommunications plan for communicating Enhanced 911 call information across networks and among PSAPs. In constructing and periodically updating the plan, the Board shall monitor trends and advances in wireless Enhanced 911 telecommunications technology, investigate and utilize development of other resources within the State as part of the wireless Enhanced 911 State plan, including GIS mapping and Voice over Internet Protocol (VoIP), and formulate

strategies for the efficient and effective delivery of wireless Enhanced 911 telecommunications services.

- (5) To provide or fund advisory services and training for PSAPs in accordance with policies and procedures established by the Board.
- (6) To advocate for issues related to wireless Enhanced 911 system functions, features, and operations to improve the delivery of wireless Enhanced 911 services to residents of and visitors to the State.
- (7) To take other necessary and proper action to implement the provisions of this Article."

SECTION 4. G.S. 62A-23 reads as rewritten:

"§ 62A-23. Amount of service charge.

(a) ~~The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection.~~ The rate of ~~such the monthly wireless Enhanced 911 service charge shall initially be set at eighty cents (80¢)~~seventy cents (70¢) per month per each CMRS connection beginning ~~October 1, 1998.~~October 1, 2005. The service charge shall have uniform application and shall be imposed throughout the State.

(b) ~~The service charge may be adjusted by the Board~~ may adjust the service charge beginning July 1, 2000 and every two years thereafter.~~on July 1 of every even-numbered year.~~ The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for primary PSAPs, over a reasonable period of time, of the costs allowed in G.S. 62A-25(b) and associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and eligible primary PSAPs over a reasonable period of time, the Board may annually adjust the allocation percentages set forth in G.S. 62A-25(a) and G.S. 62A-25(b), or reallocate funds comprising the Wireless Fund, provided, however, that any adjustment or reallocation shall be consistent with the requirements of the FCC Order.

(b1) The service charge shall also be imposed upon prepaid wireless telephone service subscribers. CMRS providers of prepaid wireless telephone service shall collect and remit to the Board the service charge under one of the following methods:

- (1) The CMRS provider shall collect, on a monthly basis, the service charge from each active prepaid wireless telephone service customer whose account balance is equal to or greater than the amount of the service charge; or
- (2) The CMRS provider shall divide the total earned prepaid wireless telephone service revenue received by the CMRS provider with respect to each active prepaid wireless telephone service customer in the State within the monthly 911 reporting period by fifty dollars (\$50.00) and multiply the quotient by the service charge amount.

...."

SECTION 5. G.S. 62A-24 reads as rewritten:

"§ 62A-24. Management of funds.

(a) ~~Each~~Except for prepaid wireless telephone service, each CMRS provider, as a part of its monthly billing process, shall collect from its subscribers the wireless

Enhanced 911 service charge described in G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

...."

SECTION 6. G.S. 62A-25 reads as rewritten:

"§ 62A-25. Use of funds.

(a) ~~Sixty percent (60%)~~Fifty-three percent (53%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to eligible primary PSAPs (the "~~40%~~PSAP Fund"). Money from the ~~40%~~PSAP Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, ~~and nonrecurring costs of establishing a wireless Enhanced 911 system.~~system, and expenses related to shared resources. For purposes of this section, shared resources expenses are limited to those expenses identified in this section and G.S. 62A-8 and shall not exceed an amount determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be distributed as follows:

- (1) Fifty percent (50%) of it shall be divided equally among the total number of eligible primary PSAPs in North Carolina. However, monthly distribution shall be made only to those eligible primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month following its compliance with the provisions of this Article. All monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January 31~~June 30 of each year will then be evenly distributed to each of the eligible primary PSAPs.
- (2) The other fifty percent (50%) shall be divided pro rata among the eligible primary PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those primary PSAPs that have complied with the provisions of this Article. Distribution to each eligible primary PSAP will begin the month

following its compliance with the provisions of this Article. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Budget and Management. All monies remaining in this portion of the 40% PSAP Fund on January 31-June 30 of each year will then be distributed to each of the eligible primary PSAPs based on the population served by the primary PSAP.

...

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding the lesser of one hundred percent (100%) of the eligible costs allowed under G.S. 62A-25(b) or one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system. The PSAP budget shall identify revenues and expenditures for eligible expense reimbursements as provided in G.S. 62A-25(b).

...

(g) To receive funds under this section, a PSAP must comply with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations that are or may be adopted by the FCC pursuant to the FCC Order. A county or municipality that has one or more PSAPs shall submit in writing to the Board information that identifies the PSAPs in the manner required by the FCC Order."

SECTION 7. Article 2 of Chapter 62A of the General Statutes is amended by adding the following new section to read:

"§ 62A-25.1. Unauthorized use of funds.

The Board shall give written notice of violation to any CMRS provider or PSAP found by the Board to be using moneys from the Wireless Fund for purposes not authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall cease making any unauthorized expenditures. The CMRS provider or PSAP may petition the Board for a hearing on the question of whether the expenditures were unauthorized, and the Board shall grant the request within a reasonable period of time. If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the Board may require the CMRS provider or PSAP to refund the moneys improperly spent within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS

provider or PSAP does not cease making unauthorized expenditures or refuses to refund improperly spent moneys, the Board may suspend funding to the provider or PSAP until corrective action is taken."

SECTION 8. Notwithstanding the provisions of G.S. 62A-22(b), to establish staggered terms of the members of the Wireless 911 Board, the terms of Joseph K. Durham, appointed by the Governor upon the recommendation of the North Carolina Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van Liew (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and Robert Cherry (a chief of police), Philip L. Penny (representing the North Carolina Chapter of the National Emergency Number Association (NENA)), and James R. Montgomery (representing a CMRS provider), appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, shall expire on June 30, 2005. The vacancies shall be filled in the same manner as the original appointments, and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms of the remaining members of the Board shall expire on June 30, 2006. After the staggered terms have been established, members appointed to the Board thereafter shall serve four-year terms in accordance with G.S. 62A-22(b).

SECTION 9. G.S. 62A-8(b) reads as rewritten:

"(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of mobile communications vehicles, ambulances, fire engines, ~~or other emergency vehicles~~vehicles, or any other expense not specifically authorized under subsection (a) of this section."

SECTION 10. The maximum 911 charge imposed by a local government under G.S. 62A-4 may not exceed the amount charged by the local government on July 1, 2005, or the amount charged pursuant to a resolution adopted on or before August 15, 2005, that becomes effective on or before December 15, 2005, whichever is greater.

SECTION 11.(a) The Joint Legislative Utility Review Committee shall study the following issues related to Article 1 of Chapter 62A of the General Statutes:

- (1) Mechanisms for increased accountability for the collection and spending of 911 charges by local governments.
- (2) Modification of what constitutes an authorized expenditure from a local Emergency Telephone System Fund.
- (3) Whether to adopt a statewide, uniform 911 charge.
- (4) Whether to create a State Emergency Telephone Fund and a formula for distributing those moneys to local governments.
- (5) Whether to designate the Community College System as the preferred provider of training for public safety answering point staff.
- (6) Any other issues related to the Article the Committee determines are relevant.

SECTION 11.(b) The Committee shall report any findings and recommendations to the General Assembly upon the convening of the 2006 Regular

Session of the 2005 General Assembly and upon the convening of the 2007 General Assembly.

SECTION 12. Section 10 of this act becomes effective July 1, 2005. The remainder of the act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:08 p.m. this 27th day of September, 2005