

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1261
Committee Substitute Favorable 5/9/05

Short Title: Wireless Telephone Service.

(Public)

Sponsors:

Referred to:

April 18, 2005

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS REGULATING WIRELESS TELEPHONE
3 SERVICE.

4 The General Assembly of North Carolina enacts:

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

6 "§ 62A-21. Definitions.

7 As used in this Article:

8 ...

9 (5) "CMRS provider" means a person or ~~entity~~entity, facilities-based and
10 nonfacilities-based, who is licensed by the FCC to provide CMRS
11 service or is reselling CMRS service.

12 ...

13 (7a) "GIS mapping" means the development of a computerized
14 geographical display system of roads and structures where emergency
15 response may be required.

16 ...

17 (9) "Mobile set telephone number" means the number assigned to a
18 CMRS ~~connection~~connection, including the 10-digit number assigned
19 to a CMRS mobile phone.

20 ...

21 (11a) "Primary PSAP" means the first point of reception of a 911 call by a
22 public safety answering point.

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

27 ...

1 (13a) "Shared resources" means any element that is used for both receiving
 2 wire line 911 calls and wireless 911 calls and is an eligible expense
 3 under G.S. 62A-8 and G.S. 62A-25.

4 (13b) "Subscriber" means a person who subscribes to a CMRS service or
 5 prepaid wireless service.

6 (14) "Wireless 911 system" means an emergency telephone system that
 7 provides the user of a CMRS connection the ability to reach a PSAP
 8 by dialing the digits 911,911 and complements a wireless Enhanced
 9 911 system.

10 ...
 11 (15a) "Wireless Enhanced 911 State plan" means a document prepared,
 12 maintained, and updated by the Wireless 911 Board that provides for
 13 all aspects of the State's integrated wireless Enhanced 911 system,
 14 including the Board's determination of permitted uses of moneys from
 15 the Wireless Fund and the amounts disbursed from the Fund to CMRS
 16 providers and PSAPs.

17"

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

19 **"§ 62A-22. Wireless 911 Board.**

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

22 (1) Two members appointed by the Governor, one upon the
 23 recommendation of the North Carolina League of Municipalities and
 24 one upon the recommendation of the North Carolina Association of
 25 County Commissioners;

26 (2) Five members appointed by the General Assembly upon the
 27 recommendation of the Speaker of the House of Representatives, one
 28 of whom shall be a sheriff, three representing CMRS providers
 29 licensed to do business in North Carolina and one representing the
 30 North Carolina Chapter of the Association of Public Safety
 31 Communications Officials (APCO);

32 (3) Five members appointed by the General Assembly upon the
 33 recommendation of the President Pro Tempore of the Senate, one of
 34 whom shall be a chief of police, two representing CMRS providers
 35 licensed to do business in North Carolina, one representing local
 36 exchange carriers licensed to do business in North Carolina, and one
 37 representing the North Carolina Chapter of the National Emergency
 38 Number Association (NENA); and

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

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

43 (b) Each member shall serve a term of four years and may be appointed to no
 44 more than two successive terms. Members shall remain in office until their successors

1 are appointed and qualified. Vacancies ~~may~~ shall be filled in the same manner as the
2 original appointment.

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

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

11"

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

14 **"§ 62A-22.1. Powers and duties of the Board.**

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

- 16 (1) To levy a monthly wireless Enhanced 911 service charge on each
17 CMRS connection. The service charge is not a tax.
- 18 (2) To make and enter into contracts and agreements necessary or
19 incidental to the performance of its duties and powers under this
20 Article, including purchase agreements that are paid with funds from
21 the administrative fee allowed under G.S. 62A-26 and other moneys
22 appropriated to or received by the Board for the wireless Enhanced
23 911 system.
- 24 (3) To accept gifts, grants, or other moneys for purposes of furthering the
25 intent of this Article.
- 26 (4) To develop a comprehensive wireless Enhanced 911
27 telecommunications plan for communicating Enhanced 911 call
28 information across networks and among PSAPs. In constructing and
29 periodically updating the plan, the Board shall monitor trends and
30 advances in wireless Enhanced 911 telecommunications technology,
31 investigate and utilize development of other resources within the State
32 as part of the wireless Enhanced 911 State plan, including GIS
33 mapping and Voice over Internet Protocol (VoIP), and formulate
34 strategies for the efficient and effective delivery of wireless Enhanced
35 911 telecommunications services.
- 36 (5) To provide or fund advisory services and training for PSAPs in
37 accordance with policies and procedures established by the Board.
- 38 (6) To advocate for issues related to wireless Enhanced 911 system
39 functions, features, and operations to improve the delivery of wireless
40 Enhanced 911 services to residents of and visitors to the State.
- 41 (7) To take other necessary and proper action to implement the provisions
42 of this Article."

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

44 **"§ 62A-23. Amount of service charge.**

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

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

17"

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

19 "**§ 62A-24. Management of funds.**

20 (a) Each CMRS provider, as a part of its monthly billing process, shall collect
21 from its subscribers the wireless Enhanced 911 service charge described in
22 G.S. 62A-23. The CMRS provider may list the service charge as a separate entry on
23 each bill. If a CMRS provider receives a partial payment for a monthly bill from a
24 subscriber, the provider shall apply the payment first against the amount the subscriber
25 owes the provider.

26"

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

28 "**§ 62A-25. Use of funds.**

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

39 (b) ~~Forty percent (40%)~~Forty-seven percent (47%) of the funds in the Wireless
40 Fund established in G.S. 62A-22(c) shall be used to make monthly distributions to
41 eligible primary PSAPs (the "40%-PSAP Fund"). Money from the 40%PSAP Fund
42 shall be used only to pay for the lease, purchase, or maintenance of emergency
43 telephone equipment for the wireless Enhanced 911 system, including necessary
44 computer hardware, software and database provisioning, ~~and~~ nonrecurring costs of

1 establishing a wireless Enhanced 911 ~~system~~-system, and expenses related to shared
2 resources. For purposes of this section, shared resources expenses are limited to those
3 expenses identified in this section and G.S. 62A-8 and shall not exceed an amount
4 determined reasonable by the Board. Money from the ~~40%~~PSAP Fund shall also be
5 used to pay the rates associated with the local telephone companies' charges related to
6 the operation of the wireless Enhanced 911 system. The ~~40%~~PSAP Fund shall be
7 distributed as follows:

8 (1) Fifty percent (50%) of it shall be divided equally among the total
9 number of eligible primary PSAPs in North Carolina. However,
10 monthly distribution shall be made only to those eligible primary
11 PSAPs that have complied with the provisions of this Article.
12 Distribution to each eligible primary PSAP will begin the month
13 following its compliance with the provisions of this Article. All
14 monies remaining in this portion of the ~~40%~~PSAP Fund on ~~January~~
15 ~~31~~June 30 of each year will then be evenly distributed to each of the
16 eligible primary PSAPs.

17 (2) The other fifty percent (50%) shall be divided pro rata among the
18 eligible primary PSAPs based on the population served by the PSAP.
19 However, monthly distribution shall be made only to those primary
20 PSAPs that have complied with the provisions of this Article.
21 Distribution to each eligible primary PSAP will begin the month
22 following its compliance with the provisions of this Article. The
23 population data to be used shall be the latest certified county and
24 official municipal estimates of population published by the Office of
25 State Budget and Management. All monies remaining in this portion of
26 the ~~40%~~PSAP Fund on ~~January 31~~June 30 of each year will then be
27 distributed to each of the eligible primary PSAPs based on the
28 population served by the primary PSAP.

29 ...

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

41 (e) In January of each year every participating PSAP will submit to the Board a
42 copy of its governing agency's approved budget detailing the PSAP's revenues and
43 expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs
44 must comply with all requests by the Board for financial information related to the

1 operation of the wireless Enhanced 911 system. The PSAP budget shall identify
2 revenues and expenditures for eligible expense reimbursements as provided in
3 G.S. 62A-25(b).

4 ...

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

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

12 **"§ 62A-25.1. Unauthorized use of funds.**

13 The Board shall give written notice of violation to any CMRS provider or PSAP
14 found by the Board to be using moneys from the Wireless Fund for purposes not
15 authorized by this Article. Upon receipt of notice, the CMRS provider or PSAP shall
16 cease making any unauthorized expenditures. The CMRS provider or PSAP may
17 petition the Board for a hearing on the question of whether the expenditures were
18 unauthorized, and the Board shall grant the request within a reasonable period of time.
19 If, after the hearing, the Board concludes the expenditures were in fact unauthorized, the
20 Board may require the CMRS provider or PSAP to refund the moneys improperly spent
21 within 90 days, and the moneys shall be deposited into the Wireless Fund. If a CMRS
22 provider or PSAP does not cease making unauthorized expenditures or refuses to refund
23 improperly spent moneys, the Board may suspend funding to the provider or PSAP until
24 corrective action is taken."

25 **SECTION 8.** Notwithstanding the provisions of G.S. 62A-22(b), to establish
26 staggered terms of the members of the Wireless 911 Board, the terms of Joseph K.
27 Durham, appointed by the Governor upon the recommendation of the North Carolina
28 Association of County Commissioners; W. Allen Whitaker (a sheriff) and Don Van
29 Liew (representing a CMRS provider), appointed by the General Assembly upon the
30 recommendation of the Speaker of the House of Representatives; and Robert Cherry (a
31 chief of police), Philip L. Penny (representing the North Carolina Chapter of the
32 National Emergency Number Association (NENA)), and James R. Montgomery
33 (representing a CMRS provider), appointed by the General Assembly upon the
34 recommendation of the President Pro Tempore of the Senate, shall expire on June 30,
35 2005. The vacancies shall be filled in the same manner as the original appointments,
36 and the persons appointed shall serve four-year terms, ending June 30, 2009. The terms
37 of the remaining members of the Board shall expire on June 30, 2006. After the
38 staggered terms have been established, members appointed to the Board thereafter shall
39 serve four-year terms in accordance with G.S. 62A-22(b).

40 **SECTION 9.** This act is effective when it becomes law.