

WIRELESS EMERGENCY PHONE SERVICE CONNECTION FEE

House Bill 4439 as enrolled
Public Act 244 of 2003

Sponsor: Rep. Ken Bradstreet
House Committee: Energy and
Technology
Senate Committee: Technology and
Energy

Second Analysis (12-30-03)

THE APPARENT PROBLEM:

The Emergency Telephone Service Enabling Act was enacted to establish and provide funding for emergency telephone service districts throughout the state. Through the establishment of such districts, callers in need of emergency assistance dial 9-1-1 and are routed through their local exchange carrier (LEC) to a public safety answering point (PSAP) that dispatches emergency services or transfers the call to another public safety agency. Since the enactment of the act in 1986, several technological advances have permitted PSAPs to upgrade their capabilities to provide an "enhanced 9-1-1" service (E911) for both traditional landline 9-1-1 calls and the ever-increasing wireless (i.e. cellular) 9-1-1 calls. This E911 system, as opposed to a basic 9-1-1 system, permits the caller to be identified, including by location. Following concerns that E911 was not available to wireless callers, particularly given that their location is not fixed, the FCC adopted an order in 1996 requiring wireless carriers to provide E911 service to all consumers.

The implementation of the wireless E911 system is to be completed in two phases. Under the first phase, which initially was to have been completed by April 1998, wireless carriers are to accompany each 9-1-1 call with a call-back number - known as the Automated Number Identification (ANI) - and an identification of the cell tower or sector from which the call originated. Under the second phase, which initially was to have been completed by October 2001, carriers must be able to identify, within a certain degree of accuracy, the geographic coordinates (longitude and latitude) of the cell phone's location. However, before a carrier implements the E911 system, it must receive a request for such services from the PSAP. The wireless carrier is required to provide wireless E911 services within six months of receiving a request

from a PSAP, but only if the PSAP can demonstrate that there is an adequate funding mechanism in place to enable it to recover the costs from facilities and equipment necessary to receive and use the E911.

Following the FCC's 1996 wireless E911 order, the Emergency Telephone Service Enabling Act was amended during the 1998-1999 legislative session to bring the state into conformity with the order. Among other provisions, the act was amended to require, beginning two years after the amendatory act's effective date, each CMRS supplier or reseller to include a 52 cent service charge per month for each CMRS connection that had a billing address in the state. The money collected from the service charge is deposited into the state CMRS Emergency Telephone Fund to implement the FCC wireless emergency service order. This provision is due to be repealed on January 1, 2004. Given that Michigan, like other states, is not fully compliant with FCC's 1996 wireless emergency service order, legislation has been introduced that would repeal the sunset and provide other amendments necessary to ensure the timely implementation of the enhanced wireless 911 system.

THE CONTENT OF THE BILL:

The Emergency Telephone Service Enabling Act assesses an emergency 9-1-1 service charge of 52 cents per month for each commercial mobile radio service (CMRS) connection (that is, a cellular telephone connection). The money collected from the service charge is deposited into the CMRS Emergency Telephone Fund. The service charge is due to expire on January 1, 2004. House Bill 4439 would extend the life of the fee; reduce the fee to 29 cents for all suppliers after December 31, 2005; allow

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an earlier reduction to 29 cents for suppliers who are not seeking reimbursement from the fund; and alter the way money in the fund is distributed. The entire act expires on December 31, 2006.

A more detailed explanation of the bill follows.

Currently under Section 409 of the act, the 52 cent wireless surcharge is disbursed as follows:

- Twenty-five cents is disbursed to reimburse CMRS suppliers licensed by the FCC for providing and installing equipment that implements the wireless emergency service order and the act.
- Ten cents is disbursed equally to each county that has a final 9-1-1 plan in place that includes implementing the wireless emergency service order and the act.
- Fifteen cents is disbursed on a per capita basis to each county that has a final 9-1-1 plan in place that include implementing the wireless emergency service order and the act.
- One and one-half cents is available to PSAPS (public safety answering points) for training personnel assigned to 9-1-1 centers.
- One-half of one cent is retained by the CMRS supplier or reseller to cover the costs of billing and collection (per section 408).
- For the first two years following the 1999 amendments to the act, the wireless surcharge was 55 cents per month. During that time, three cents was set aside for use by the Department of State Police “to fund priority issues of 9-1-1 coverage.”

The bill would maintain this distribution system except that it would eliminate the 25 cents to CMRS suppliers, and would provide up to one-half of one cent from the service charge to the Department of State Police if the department sought reimbursement from the fund for costs in administering the act or for costs of operating a regional dispatch center that receives and dispatches 911 calls. If the state police created the position of E-911 coordinator, then the administering costs allowed could not exceed one cent of the monthly service charge. The bill would repeal the current distribution formula in Section 409 and place the new, similar, formula into Section 408. The bill further provides that the money in the fund would be distributed as provided under subsections 2, 4, and 11. Those sections, described below, provide for the distribution of money to CMRS suppliers and

the state police, and provide for the determination of what costs are eligible for reimbursement.

Prior to July 1, 2004, all CMRS suppliers would be required to notify the Emergency Telephone Service Committee (ETSC) in writing as to whether they will seek reimbursement from the fund for any costs incurred through December 31, 2005 in implementing the wireless service order and the act. If a CMRS supplier provides notice to the ETSC that it will not seek reimbursement, it would be required to impose a charge of 29 cents. If a CMRS supplier continues to receive money from the fund after July 1, 2004, it would continue to assess the 52 cent surcharge until December 31, 2005. After that date, those CMRS suppliers would also assess a surcharge of 29 cents per month.

All CMRS suppliers would be permitted to submit an invoice of costs to the ETSC for reimbursement of those costs until July 1, 2004. After that date, only those CMRS suppliers that have chosen to continue to seek reimbursement would be permitted to submit an invoice. Within 90 days of the date the invoice is submitted, the subcommittee of the ETSC that is established to review expenditures from the fund, would review the invoice and make a recommendation to the full committee to approve (in whole or in part) or deny the invoice. The committee would authorize payment from the fund based on the recommendation of the committee; however, reimbursement of costs would only be approved by the ETSC if the invoice is of costs that are directly related to the providing and installing of equipment that implements the wireless emergency service.

The bill also allows the Department of State Police to seek reimbursement from the fund. The MSP would be permitted to seek reimbursement from the fund for costs incurred in administering the act or the operation of a regional dispatch center that receives and dispatches 9-1-1 calls. The reimbursement would not exceed one-half of one cent of the monthly service charge. However, if the MSP establishes an E911 coordinator position within the department, the reimbursement would not exceed one cent of the monthly service charge.

The Department of State Police would be required to annually submit a prioritized list of projects the department recommends for funding from funds collected under former section “409(e)” of the act. The legislature would review and approve these projects by law. If a project provides infrastructure or equipment for use by CMRS suppliers, the department would be required to charge a reasonable

fee for the use of that infrastructure or project. Any fees collected would be deposited into the fund. [Note: This language is currently in section 409(1)(e) and was in force during the first two years following the enactment of Public Act 78 of 1999. During that time the state police received three cents from the then-55 cent service charge. However, it is presumed that the reference to “former section 409(e)” really should mean “former section 409(1)(e)”, as the language in the bill and that section are identical and there is no section 409(e) in the act.]

The bill provides that a county would not be eligible to receive any disbursements from the fund unless the county is compliant with the wireless service order and the act. A county would need to be compliant with Phase I implementation by June 30, 2004 and Phase II implementation by June 30, 2005. A county that is not compliant with Phase I or Phase II by the required date would have to use the money from the fund only for the purposes of becoming compliant. A county that is not compliant with Phase I at the end of 2004 and Phase II by the end of 2005 would not be eligible to receive money from the fund, and could only receive such funds when the ETSC determines that the county is compliant.

The bill further provides that the Public Service Commission (PSC), following a contested case, would be required to issue an order within 180 days of the bill’s effective date (January 1, 2004) that establishes the costs related to the wireless emergency service order that a local exchange provider could recover. Any cost reimbursement would not include any costs that are not related to complying with the order. After the PSC issues the order, a local exchange provider would be permitted to submit an invoice to the PSC for reimbursement from the fund for costs incurred that are allowed under the commission order. With 45 days after the invoice is submitted, the PSC would make a recommendation to the ETSC for approval, in whole or in part, or for denial of the invoice. The ETSC would authorize payment of an invoice in accordance with the PSC’s recommendation.

The act also provides that if the total amount of invoices received exceeds the amount that is available in the fund at the end of the quarter, all CMRS suppliers that submitted invoices would receive a pro rata share of the money in the fund. The bill would delete a provision that states that any unpaid balance shall be carried over into the following quarter until all approved payments are paid.

Finally, the act provides that except for commercial radio service, a dispute between one or more service suppliers, counties, public agencies, public service agencies, or combination thereof regarding their respective rights and duties under the act shall be heard as a contested case before the Public Service Commission in accordance with the Administrative Procedures Act. The bill would exempt local exchange providers from this provision.

MCL 484.1408 et al.

BACKGROUND INFORMATION:

Previous Legislation. Following the FCC’s 1996 wireless E911 order, the Emergency Telephone Service Enabling Act was amended during the 1998-1999 legislative session to bring the state into conformity with the order. Under the package of four bills – House Bills 4658 and 4659, and Senate Bills 492 and 493 - the act was amended to do the following:

- Establish a state commercial mobile radio service (CMRS) emergency telephone fund to provide for the implementation of the FCC wireless emergency service order.
- Re-establish, with some changes, the Emergency Telephone Service Committee.
- Authorize various types of entities that govern local 9-1-1 districts to pledge revenue for the repayment of qualified obligations.
- Prohibit a public service agency from withdrawing its jurisdiction from a 9-1-1 service district until outstanding qualified obligations were paid.
- Require a supplier to telephone services, other than a commercial radio service supplier (CMRS), to provide a 9-1-1 database service provider accurate information pertaining to service users, and to provide the information within one business day.
- Require a CMRS supplier to provide accurate database information for location and number identification, in compliance with the FCC wireless emergency service order.
- Revise certain user fees for 9-1-1 services.
- Require the Emergency Telephone Service Committee (ETSC) to provide technical assistance in formulating and implementing a 9-1-1 service plan.

- Require a CMRS supplier, county, public agency, or public service agency that had a dispute with another of those entities to request assistance from the ETSC.
- Provide criminal penalties for knowingly using an emergency telephone service for a non-emergency purpose.

ETSC Report. In its 2003 report to the legislature, the Emergency Telephone Service Commission notes that, “[a]ll of Michigan’s 83 counties have requested Phase I wireless service and 31 counties have requested or are pending Phase II service. To date, 61 counties have implemented Phase I and 21 have partially implemented Phase I, meaning the service is being provided by at least some of the CMRS suppliers licensed to do business within the county. One county is still pending.” The committee report further notes that 22 states have a higher wireless surcharge than the state, nine states have a \$0.50 per month surcharge, and one state charges \$0.51.

Pending Federal Legislation. Currently before the U.S. Congress is H.R. 2898, a bill to establish the E-911 Implementation Act of 2003. The bill would amend Part C of Title I of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) to provide for the establishment of the E911 Implementation Coordination Office within the National Telecommunications and Information Administration. The office would facilitate coordination between federal, state, and local emergency communications systems, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E911 services.

The bill requires the Assistant Secretary of Commerce for Communications and Information to provide grants to eligible entities for planning, infrastructure improvements, telecommunications equipment purchases, and personnel training for the implementation of Phase II E911 services, with the federal share of those grants not to exceed 50 percent. If an applicant for a grant under the bill is a state, the state would have to (1) coordinate its application with PSAPs within the state, (2) have a designated officer or governmental body serve as the coordinator of the implementation of E911 services, though such designation would not have to vest that coordinator with direct legal authority to implement E911 services or manage emergency communications operations, (3) have an established plan for the coordination and implementation of E911 services,

and (4) have integrated telecommunications services involved in the delivery of Phase II. The bill authorizes (but does not appropriate) up to \$100 million annually for fiscal years 2004 through 2008 to the Department of Commerce for grants. The bill passed the House of Representatives in early November 2003, and is pending before the Senate Committee on Commerce, Science, and Transportation.

In urging for passage of the H.R. 2898 through the full House, Michigan Congressmen Fred Upton stated, “[f]or a number of years, our Nation’s wireless carriers and PSAPs have been in the midst of deploying Phase II E-911, which would, in fact, provide PSAPs with the automatic location information of cell phone callers who dial 9-1-1. While our Nation’s wireless carriers have been deploying the technology and the infrastructure to achieve Phase II E-911, our Nations PSAPs have been confronted by enormous challenges in getting their piece of the puzzle in place. Our Subcommittee on Telecommunications and the Internet held a number of hearings on how we could overcome these challenges, and we arrived at a number of conclusions which form the basis of this legislation, H.R. 2898. First and foremost, we need to help our Nation’s PSAPs cope with the financial demands of becoming Phase II ready. This bill answers the call by providing a significant grant program in the amount of \$100 million a year for 5 years, with a 50 percent non-Federal match requirement to States and municipalities to help them procure their Phase II equipment as well as their training. Second, we need to ensure coordination and information sharing at all levels of government and with the other stakeholders as they continue to sort through the maze of challenges that lay ahead. This bill answers that call, too, by not only incentivizing States to have statewide E-911 coordinators, but also establishing a new Federal E-911 Coordination Office that will be a joint program office between NHTSA and the NTIA. Third, we heard that some States have raided their E-911 surcharge monies collected from wireless customers for things completely unrelated to E-911. This is nothing more than picking the pockets of consumers and stealing the funds which should be going toward deployment of this life-saving technology. This bill answers that call by creating disincentives to States who raid those E-911 funds. More to the point, no entity will be eligible for grant monies under this bill if they reside in a State that is raiding those E-911 surcharge accounts.” [Congressional Record, November 4, 2003.]

Concurrent State Legislation. Late last month, the legislature passed and the governor signed into law the HB 4367 (Public Act 237), the supplemental appropriations bill to help balance a projected deficit in the FY 2003-2004 budget. Among a host of other provisions, the bill called for the diversion of \$12 from the CMRS Emergency Telephone Fund to the State Building Authority to partially support the authority's rent and maintenance for the Michigan Safety Communications System. The shift in funds was designed to offset a \$12 million reduction in general fund/general purpose money. However, further legislation is required to allow for the diversion.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency notes that the current 52-cent service charge has generated over \$88 million since FY 1999-2000. For FY 2002-03, approximately \$28 million was generated, including \$13.8 million for CMRS suppliers, \$5.4 million divided equally among the counties, \$8.0 million divided among the counties on a per capita basis, and \$0.8 million to PSAPs. The SFA further notes that under the bill, after CMRS suppliers begin charging the 29-cent service charge, counties and PSAPs would continue to receive the designated money as under the current 52-cent service charge, though that money could also be used to support costs incurred by the state police and CMRS suppliers. (SFA analysis, 12-5-03)

ARGUMENTS:

For:

The bill makes several important amendments to the current law. First, the bill extends the sunset of the CMRS connection service charge. At present the service charge is set to expire on January 1, 2004. The bill provides that the full 52 cent service charge would continue to be collected (except in certain instances) through 2005. After that date a service charge of 29 cents will be collected. The continuation of this charge provides much needed support to enable PSAPs, CMRS suppliers, local exchange providers, the state police, and others to continue to fully implement the wireless emergency service system. The bill also provides for a service charge after the system is scheduled to be fully implemented to allow for continued training and improvements to the system.

Second, the bill allows wireless providers to essentially opt out of the system. Under the current

system, wireless providers are permitted, but not required, to seek reimbursement from the CMRS Emergency Telephone Fund. Some providers testified before the House Committee on Energy and Technology that they are currently not seeking reimbursement for their costs incurred in implementing Phase II of the wireless E911 system. Wireless providers often forego reimbursement, reportedly, if they feel that they would in some way profit from the technology developed for the system. The thinking is, generally, that they would not want to be reimbursed for those costs and then, later, use that technology in some other way and profit from that use. For these wireless providers, the service charge billed to their customers is artificially high. The bill says that wireless providers that opt out are to reduce the monthly 9-1-1 service charge to 29 cents, thus permitting them to collect a service charge commensurate with their billing costs and that provides continued support to counties, PSAPs, and the state police.

Third, the bill provides money to the state police for their costs. In many place throughout the state (particularly Detroit and the Upper Peninsula), the state police plugs the gaps in the 9-1-1 system by operating as a PSAP. The additional money provided here allows the MSP to recover some of its costs. In addition, in its 2003 report to the legislature, the ETSC notes that "[t]he most important thing the Legislature can do is create a State 9-1-1 Coordinator/Administrator position to take on the day-to-day responsibilities that have been carried, to date, by people who have other full-time jobs. It is simply no longer possible to expect people with other responsibilities to volunteer well over 50 percent of their employment time to facilitate statewide 9-1-1 activities. The responsibility of monitoring the activities of over 200 PSAPs, managing \$30 million in wireless funding each year, and coordinating the implementation of new 9-1-1 technologies has gone way past the ability of volunteers. The ETSC is an excellent resource, and brings many different disciplines together to achieve our common goals with regard to 9-1-1. However, this committee of volunteers cannot do what a full-time coordinator can do. Many states have implemented statewide 9-1-1 coordinator/administrator positions. Michigan needs to address this issue now. [The ETSC] strongly urges the Legislature and other public safety officials to work together to make a statewide 9-1-1 coordinator function a reality." That being said, the bill provides some additional funding to the MSP for the establishment of an E911 coordinator/administrator position.

Fourth, the bill provides money to local exchange providers for their costs incurred in helping implement a wireless 9-1-1 system. These local exchange providers (land-line phone service providers) also play a vital role in the wireless E911 system by providing many of the routers, location information databases, and other facilities that are used to deliver enhanced 9-1-1 calls and the associated callback numbers of location information to the appropriate PSAP. Allowing them to seek reimbursement from the fund allows them to recover some of their costs. Further, this change is necessary given a recent decision by the Barry County Circuit Court regarding the ability of SBC and local exchange carriers to recover some of their costs from the CMRS Emergency Telephone Fund. SBC had intended to recover its costs, estimated at \$600,000, through a tariff charging counties \$4,800 and 15 cents per call. However, the Michigan Communications Directors Association challenged the proposed tariff in Barry County Circuit Court, asserting that SBC should recover its costs through the fund. While the ETSC subcommittee rejected SBC's invoice for reimbursement because SBC hadn't contributed to the fund and its costs were itemized, the judge in the case ordered the Department of Treasury to pay SBC after it submits a proper invoice. The case is now before the court of appeals.

Finally, the bill places greater limits on how counties may spend money received from the CMRS Emergency Telephone Fund. Last month, the *Detroit News* reported that many counties were spending money received from the fund for purposes other than those intended by the act, such as upgrading dispatch centers rather than upgrading technology and equipment necessary for the implementation of the enhanced 9-1-1 system, or have distributed the funds unevenly to local governmental units. As an example, the *News* cited Oakland County, which handles 9-1-1 cell phone calls north of M-59. Reportedly, the county spent \$2.7 million to upgrade its dispatch center, but left no money to meet its costs for implementing Phase II. To this end, the bill specifies that a county that is not compliant can only spend the money it receives from the fund for whatever is necessary to bring it into compliance and, should the county remain out of compliance more than six months beyond the required deadline, it will not receive any money until it becomes compliant.

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.