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SENATE BILL NO. 395

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 6, 2006)

(Patron Prior to Substitute—Senator Stolle)

A BILL to amend and reenact §§ 56-484.12 through 56-484.15 and § 56-484.17 of the Code of Virginia, relating to the Enhanced Public Safety Telephone Services Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-484.12 through 56-484.15 and § 56-484.17 of the Code of Virginia are amended and reenacted as follows:

§ 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless Enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Place of primary use" has the meaning attributed in subsection M of § 58.1-3812.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"VoIP service" means interconnected voice over Internet protocol service as defined in the Code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

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60 "Wireless E-911 surcharge" means a monthly fee of \$0.75 billed by each CMRS provider and CMRS
61 reseller on each CMRS number of a customer with a place of primary use in Virginia; provided,
62 however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17 is
63 not required to be billed.

64 § 56-484.13. Wireless E-911 Services Board; membership; terms; compensation.

65 A. The Wireless E-911 Services Board is hereby created, ~~which~~. *The Board shall plan, promote and*
66 ~~assist in offer assistance:~~

67 1. *In the statewide development, deployment, and maintenance of enhanced wireless emergency*
68 *telecommunications services and technologies. The Board shall similarly promote and assist in; and*

69 2. *In the development and deployment of enhanced wireline emergency telecommunications services*
70 *and technologies only in specific local jurisdictions that are were not currently wireline E-911 capable*
71 *by July 1, 2000.*

72 The Board shall exercise the powers and duties conferred in this article.

73 B. *The Wireless E-911 Services Board may promote and offer planning assistance:*

74 1. *In the statewide development, deployment, and maintenance of VoIP E-911 and any other future*
75 *communications technologies accessing E-911 for emergency purposes;*

76 2. *To the Virginia Information Technologies Agency (VITA), and other stakeholder agencies, in the*
77 *development and deployment of a statewide public safety network that will support future E-911 and*
78 *other public safety applications; and*

79 3. *However, the Board shall seek funding from sources other than CMRS providers or customers of*
80 *CMRS to support efforts that exceed the scope of wireless E-911 service.*

81 C. The Board shall consist of ~~14~~ 15 members as follows: the Chief Information Officer, who shall
82 serve as chairman of the Board; the Comptroller, who shall serve as the treasurer of the Board; and the
83 following ~~twelve~~ 13 members to be appointed by the Governor: one member representing the Virginia
84 Department of Emergency Management, one member representing the Virginia State Police, ~~one member~~
85 ~~representing a local exchange carrier providing E-911 service in Virginia,~~ two members representing
86 wireless service providers authorized to do business in Virginia, ~~two~~ three county, city or town PSAP
87 directors or managers *representing diverse regions of Virginia*, one Virginia sheriff, one chief of police,
88 one fire chief, one emergency medical services manager, and one finance officer of a county, city, or
89 town.

90 C. Initial appointments to the Board shall be for the following terms: four members shall serve
91 five-year terms, ~~four members shall serve four-year terms, and four members shall serve three-year~~
92 ~~terms. Thereafter, all~~ D. All members appointed by the Governor shall serve five-year terms. The CIO
93 and the Comptroller shall serve terms coincident with their terms of office. No gubernatorial appointee
94 shall serve more than two consecutive terms.

95 D E. A majority of the Board shall constitute a quorum. The Board shall ~~hold its first meeting on or~~
96 ~~before October 1, 2000, and shall meet at least monthly through June 2002, and at least quarterly~~
97 ~~thereafter, or at the call of its chairman.~~

98 E F. Members of the Board shall serve without compensation; however, members of the Board shall
99 be reimbursed for expenses as provided in §§ 2.2-2813 through 2.2-2826.

100 F G. The Division shall provide staff support to the Board. The Geographic Information Network
101 Division created in § 2.2-2026 and the Virginia Department of Transportation shall provide such
102 technical advice as the Board requires.

103 § 56-484.14. Powers and duties of Wireless E-911 Services Board.

104 The Board shall have the power and duty to:

105 1. Make and enter into all contracts and agreements necessary or incidental to the performance of its
106 duties and the execution of its powers, including purchase agreements payable from (i) the Wireless
107 E-911 Fund and (ii) other moneys appropriated for the provision of enhanced ~~wireline emergency~~
108 ~~telecommunications 9-1-1 services only in specific local jurisdictions that are not wireline E-911 capable~~
109 ~~as of July 1, 2000.~~

110 2. Pursue all legal remedies to enforce any provision of this article, or any contract entered into
111 pursuant to this article.

112 3. Develop a comprehensive, *statewide enhanced wireless emergency telecommunications plan for*
113 ~~implementing statewide enhanced wireless emergency telecommunications services 9-1-1 plan for~~
114 ~~wireless E-911, VoIP E-911, and any other future communications technologies accessing E-911 for~~
115 ~~emergency purposes.~~ In constructing and periodically updating this plan as appropriate, the Board shall
116 monitor trends and advances in enhanced wireless, *VoIP, and other emergency telecommunications*
117 ~~technology technologies, plan and forecast future needs for these enhanced wireless emergency~~
118 ~~telecommunications technology technologies, and formulate strategies for the efficient and effective~~
119 ~~delivery of enhanced wireless emergency telecommunications 9-1-1 services in the future with the~~
120 ~~exclusion of traditional circuit-switched wireline 9-1-1 service.~~

121 4. Develop and adopt regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et

seq.); for funding enhanced wireless emergency telecommunication services in the Commonwealth.

5. Grant such extensions of time for compliance with the provisions of § 56-484.16 as the Board deems appropriate.

6. Take all steps necessary to inform the public of the use of the digits "9-1-1" as the designated emergency telephone number and the use of the digits "#-7-7" as a designated non-emergency telephone number.

7. Report annually to the Governor, the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission on (i) the state of enhanced wireless emergency telecommunications 9-1-1 services in the Commonwealth, (ii) the impact of, or need for, legislation affecting enhanced wireless emergency telecommunications 9-1-1 services in the Commonwealth, and (iii) the need for changes in the Wireless E-911 funding mechanism provided to the Board, as appropriate; and (iv) the sufficiency of other moneys appropriated for the provision of enhanced wireline emergency telecommunications services only in those local jurisdictions not wireline capable as of July 1, 2000.

8. Provide advisory technical assistance to PSAPs and state and local law enforcement, and fire and emergency medical service agencies, upon request.

9. Collect, distribute, and withhold moneys from the Wireless E-911 Fund as provided in this article.

10. Develop a comprehensive single, statewide electronic addressing database to support geographic data and statewide base map data programs pursuant to § 2.2-2027.

11. Receive such funds as may be appropriated for purposes consistent with this article and such gifts, donations, grants, bequests, or other funds as may be received from, applied for or offered by either public or private sources.

12. Manage other moneys appropriated for the provision of enhanced wireline emergency telecommunications services only in specific local jurisdictions that are not wireline E-911 capable as of July 1, 2000.

13. Perform all acts necessary, convenient or desirable to carrying out the purposes of this article.

13. Drawing from the work of E-911 professional organizations, in its sole discretion, publish best practices for PSAPs. These best practices shall be voluntary and recommended by a subcommittee composed of PSAP representatives.

§ 56-484.15. Wireless Carrier E-911 Cost Recovery Subcommittee established.

A. There is hereby established a Wireless Carrier E-911 Cost Recovery Subcommittee of the Board. The Subcommittee shall (i) meet only to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service and (ii) review only those documents necessary to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service.

B. The Subcommittee shall consist of the following ~~six~~ seven members from the Board: the representative of the Virginia State Police; the ~~two~~ three PSAP directors or managers; the finance officer of a county, city or town; the CIO, who shall serve as the Subcommittee's chairman; and the Comptroller.

C. Staff to the Subcommittee shall be provided by the Division of Public Safety Communications created pursuant to § 2.2-2031.

D. Unless otherwise ordered by a court of competent jurisdiction, no member or staff of the Subcommittee shall release or disclose the contents of documents used to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Except as provided in § 2.2-2031, moneys in the Fund shall be used solely for the purposes stated in subsections C through F D. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Information Officer of the Commonwealth.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. In addition, the wireless E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to the provisions in this subsection. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Board for deposit in the Fund. Each CMRS provider and CMRS reseller may retain an amount equal to three percent of the amount collected to defray the costs of collecting the surcharges. State and local taxes shall not

183 apply to any wireless E-911 surcharge collected from customers. Surcharges collected from customers
184 who do not purchase CMRS service on a prepaid basis shall be subject to the provisions of subsection
185 K of § 58.1-3812.

186 For CMRS customers who do not purchase CMRS service on a prepaid basis, the CMRS provider
187 and CMRS reseller shall collect the surcharge through regular periodic billing.

188 For CMRS customers who purchase CMRS service on a prepaid basis, the wireless E-911 surcharge
189 shall be determined according to one of the following methodologies:

190 a. The CMRS provider and CMRS reseller shall collect, on a monthly basis, the wireless E-911
191 surcharge from each active prepaid customer whose account balance is equal to or greater than the
192 amount of the surcharge; or

193 b. The CMRS provider and CMRS reseller shall divide its total earned prepaid wireless telephone
194 revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting
195 period by \$50, multiply the quotient by the surcharge amount, and pay the resulting amount to the
196 Board without collecting a separate charge from its prepaid customers for such amount; or

197 c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale.

198 Collection of the wireless E-911 surcharge from or with respect to prepaid customers shall not reduce
199 the sales price for purposes of taxes which are collected at point of sale.

200 C. ~~To the extent of appropriated funds, Sixty percent of the Wireless E-911 fund shall be distributed~~
201 ~~on a monthly basis to the PSAPs according to the percentage of recurring wireless E-911 funding~~
202 ~~received by the PSAP as determined by the Board. The Board shall calculate the distribution percentage~~
203 ~~for each PSAP at the start of each fiscal year based on the cost and call load data from the previous~~
204 ~~fiscal year and implement this percentage by October 1 of the current year. Using thirty percent of the~~
205 ~~Wireless E-911 fund, the Board shall provide full payment to PSAP operators for all wireless E-911~~
206 ~~PSAP costs and to CMRS providers of all wireless E-911 CMRS costs. For these purposes (i) each~~
207 ~~PSAP operator shall submit to the Board on or before October 1 of each year, an estimate of wireless~~
208 ~~E-911 PSAP costs it expects to incur during its next fiscal year and (ii) each CMRS provider shall~~
209 ~~submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs~~
210 ~~it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it~~
211 ~~operates. The Board shall review such estimates and advise each PSAP operator and CMRS provider on~~
212 ~~or before the following March 1 whether its estimate qualifies for payment hereunder and whether the~~
213 ~~Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. Each PSAP~~
214 ~~operator and CMRS provider shall notify the Board promptly of any material change in its plans to~~
215 ~~provide wireless E-911 service. The remaining 10% of the fund and any remaining funds for the~~
216 ~~previous fiscal year from the 30% for CMRS providers shall be distributed to PSAPs or on behalf of~~
217 ~~PSAPs based on grant requests received by the Board each fiscal year. The Board shall establish~~
218 ~~criteria for receiving and making grants from the Fund, including procedures for determining the~~
219 ~~amount of a grant and payment schedule; however, the grants must be to the benefit of wireless E-911.~~
220 ~~Any grant funding that has not been committed by the Board by the end of the fiscal year shall be~~
221 ~~distributed to the PSAPs based on the same distribution percentage used during the fiscal year in which~~
222 ~~the funding was collected; however, the Board may retain some or all of this uncommitted funding for~~
223 ~~an identified funding need in the next fiscal year.~~

224 D. The Board shall make such qualifying payments to each PSAP operator and CMRS provider at
225 the beginning of each calendar quarter of such fiscal year or on an alternate schedule approved by the
226 Board. If the Wireless E-911 Fund is insufficient during any calendar quarter to make all such
227 qualifying payments, the Board shall prorate payments equally among all PSAP operators and CMRS
228 providers during such calendar quarter. Unpaid amounts may be included in future funding requests to
229 the Board.

230 E. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall audit the
231 grant funding received by all recipients to ensure it was utilized in accordance with the grant
232 requirements. For the fiscal year ending June 30, 2005, the Board shall determine whether qualifying
233 payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were
234 less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or
235 CMRS provider. Each PSAP operator or CMRS provider funding recipient shall provide such
236 verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the
237 Board or credited to qualifying payments during the then current fiscal year, on such schedule as the
238 Board shall determine. If payments are less than the actual costs reported, the Board may include the
239 additional funding with the next quarterly payment for in the then current fiscal year.

240 F. Any estimate of wireless E-911 PSAP costs submitted to the Board after October 1 and any
241 estimate of wireless E-911 CMRS costs submitted to the Board after December 31 of any year shall be
242 reviewed by the Board as described in subsection C to the extent practicable as determined by the
243 Board; however, any PSAP or CMRS costs submitted after the start of the fiscal year shall not be
244 considered by the Board. Qualifying payments based on estimates submitted in accordance with the

schedule set forth in subsection C shall have priority for payment.

G. CMRS providers and PSAPs found by the Board to be using the Wireless E-911 Fund moneys for purposes other than those authorized by the Board shall be provided with written notice by the Board of such unauthorized expenditures. Upon receipt of the notice, the named CMRS provider or PSAP shall cease making any expenditure involving Wireless E-911 Fund moneys identified by the Board as unauthorized. The CMRS provider or PSAP may petition and shall receive a hearing before the Board within a reasonable time. At the Board's discretion, the CMRS provider or PSAP shall be required to refund within 90 days any Wireless E-911 Fund moneys spent on unauthorized expenditures to the Board for deposit into the Wireless E-911 Fund. CMRS providers or PSAPs who fail to cease making unauthorized expenditures or fail to comply with a request to refund Wireless E-911 Fund moneys shall be subject to a suspension of future Wireless E-911 funding by the Board until such time as they comply with all provisions of this article. Any action of the Board made pursuant to this subsection shall be subject to appeal to the circuit court in which the CMRS provider or PSAP is located, or to the Circuit Court for the City of Richmond.

H E. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission.

I F. The special tax authorized by § 58.1-3813.1 shall not be imposed on consumers of CMRS.