

1 HB662
2 119386-2
3 By Representative Ford
4 RFD: Boards and Commissions
5 First Read: 03-MAR-10

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8 SYNOPSIS: Under existing law, an enhanced 911 (E-911)
9 system provides wireless customers with emergency
10 E-911 communications service. The Commercial Mobile
11 Radio Service (CMRS) Board is authorized to levy
12 certain customer fees to fund the service.

13 This bill would rename the board and
14 increase the membership of the board.

15 This bill would allow the board to enlist
16 the Attorney General to assist with any legal
17 actions and would allow the board to request the
18 Legislature for monies to cover the legal expenses.

19 This bill would subject the board to
20 oversight and regulation by the Alabama Public
21 Service Commission and would provide that certain
22 expenses of the board could only be paid from
23 appropriations from the Legislature.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 To amend Sections 11-98-7 and 11-98-8, Code of
3 Alabama 1975, relating to the regulation of emergency
4 telephone service (E-911) on commercial mobile radio service;
5 to rename and increase the size of the board that levies fees
6 to fund the service; to allow the board to use the Attorney
7 General to assist with legal actions; to subject the board to
8 regulation by the Alabama Public Service Commission; and to
9 provide that certain expenses of the board could only be paid
10 from appropriations from the Legislature.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 11-98-7 and 11-98-8, Code of
13 Alabama 1975, are amended to read as follows:

14 "§11-98-7.

15 "(a) There is created a ~~Commercial Mobile Radio~~
16 ~~Service (CMRS)~~ the Alabama Wireless E-911 Board, consisting of
17 ~~seven~~ nine members who shall be citizens of this state and
18 shall reflect the racial, gender, geographic, urban and rural,
19 and economic diversity of the state. The board shall annually
20 report to the Legislature by the second legislative day of
21 each regular session the extent to which the board has
22 complied with the diversity provisions of this subsection.

23 "(1) The first ~~five~~ six members of the board, each
24 of whom shall serve for a term of four years, shall be
25 appointed by the Governor, subject to confirmation by the
26 Senate, as follows:

1 ~~"a. Two members~~ One member recommended by the ~~ECDs~~
2 Association of County Commissions of Alabama.

3 ~~"b. Two members recommended by CMRS providers~~
4 ~~licensed to do business in Alabama.~~

5 "b. One member, with homeland security experience,
6 recommended by the Director of the Alabama Department of
7 Homeland Security.

8 "c. Three members recommended by CTIA - The Wireless
9 Association, at least one of whom must be affiliated with a
10 wireless carrier offering predominantly prepaid wireless
11 services in Alabama.

12 ~~"c.d.~~ One member recommended by the State Auditor
13 Chair of the Public Service Commission.

14 "(2) The next two members of the board, each of whom
15 shall have experience in financial management and each of whom
16 shall serve for a term of four years, shall be appointed as
17 follows:

18 "a. One member ~~of the House of Representatives~~
19 appointed by the Speaker of the House.

20 "b. One member ~~of the Senate~~ appointed by the
21 Lieutenant Governor.

22 "(3) One member, who shall serve for a term of four
23 years, appointed by the Attorney General to represent the
24 interests of consumers and customers who pay the emergency
25 telephone service charge.

26 ~~"(3)(4)~~ The term of each member shall be four years,
27 except that of the members first appointed, one representing

1 ECDs shall serve for three years and one representing CMRS
2 providers shall serve for three years, one representing ECDs
3 shall serve two years and one representing CMRS providers
4 shall serve two years. The Governor shall designate the term
5 which each of the members first appointed shall serve when he
6 or she makes appointments. The two legislative members shall
7 serve for the length of their elective service, but no more
8 than four years.

9 "(5) Notwithstanding any other provisions of this
10 chapter, recommendations for board appointments shall be made
11 no later than September 1, 2010, and appointments shall be
12 made to fill all member positions by January 1, 2011. Board
13 members serving at the time of the enactment of this act may
14 continue to serve until the appointments are made pursuant to
15 this act.

16 "(4)(6) In the event of a vacancy, a vacancy shall
17 be filled for the balance of the unexpired term in the same
18 manner as the original appointment. Any vacancy occurring on
19 the board, whether for an expired or unexpired term, shall be
20 filled by appointment by the appointing authority as soon as
21 practicable after a vacancy occurs, whether for an expired or
22 unexpired term.

23 "(5)(7) For all terms expiring after October 1,
24 2007, appointments made by the Governor shall be subject to
25 confirmation by the Senate as provided in this subdivision.
26 Appointments made at times when the Senate is not in session
27 shall be effective immediately ad interim and shall serve

1 until the Senate acts on the appointment as provided herein.
2 Any appointment made by the Governor while the Senate is in
3 session shall be submitted to the Senate not later than the
4 third legislative day following the date of the appointment.
5 Any appointment made while the Senate is not in session shall
6 be submitted not later than the third legislative day
7 following the reconvening of the Legislature. In the event the
8 Senate fails or refuses to act on the appointment, the person
9 whose name was submitted shall continue to serve until action
10 is taken on the appointment by the Senate.

11 (b) The board shall have the following powers and
12 duties:

13 (1) To levy a CMRS emergency telephone service
14 charge on each CMRS end-user with a connection that has a
15 place of primary use within the geographical boundaries of the
16 State of Alabama. The rate of the CMRS service charge shall be
17 seventy cents (\$.70) per month per CMRS customer on each CMRS
18 connection beginning on May 1, 1998, which amount shall not be
19 increased except by the Legislature; provided, however, that
20 in lieu of the monthly service charge, the board may adopt a
21 comparable charge based on a percentage of the price of the
22 CMRS services charged to the customer. The CMRS service charge
23 shall be levied on each end-user on an equitable,
24 nondiscriminatory, and competitively neutral basis, shall have
25 uniform application, and shall be imposed throughout the
26 state. The board shall receive all revenues derived from the

1 CMRS service charge levied in the state and collected pursuant
2 to Section 11-98-8.

3 "(2) To establish and maintain the CMRS Fund as an
4 insured, interest-bearing account into which the board shall
5 deposit all revenues derived from the CMRS service charge
6 levied on CMRS connections and collected pursuant to Section
7 11-98-8. ~~The revenues deposited into the CMRS Fund shall not
8 be moneys or property of the state and shall not be subject to
9 appropriation by the Legislature.~~

10 "(3) To make disbursements from the CMRS Fund in the
11 following amounts and in the following manner:

12 "a. Out of the funds collected by the board ~~and~~
13 ~~after deduction of administrative expenses~~, 56 percent shall
14 be distributed to ECDs in accordance with the distribution
15 formula and may only be used for the lease, purchase, or
16 maintenance of wireless enhanced emergency telephone
17 equipment, including necessary computer hardware, software,
18 and data base provisioning, for incremental expenses directly
19 related to the FCC Order and the handling of wireless
20 emergency calls.

21 "b. Beginning on October 1, 2007, 24 percent shall
22 be distributed to ECDs in accordance with Section 11-98-7.1.

23 "c. Twenty percent shall be deposited into a bank
24 account and shall be used solely for the purpose of payment of
25 the actual costs incurred by CMRS providers in complying with
26 the wireless E-911 service requirements established by the FCC
27 Order and any rules and regulations which are or may be

1 adopted by the FCC pursuant to the FCC Order, ~~including, but~~
2 ~~not limited to,~~ which shall be limited to costs and expenses
3 incurred for designing, upgrading, purchasing, leasing,
4 programming, installing, testing, or maintaining all necessary
5 data, hardware, and software required in order to provide the
6 service as well as the incremental costs of operating the
7 service. Verified itemized statements shall be presented to
8 the board in connection with any request for payment by any
9 CMRS provider and shall be approved by a majority vote of the
10 board prior to any disbursement. Approval shall not be
11 withheld or delayed unreasonably. In no event shall any
12 invoice be approved for the payment of costs that are not
13 related to compliance with the wireless E-911 service
14 requirements established by the FCC Order and any rules and
15 regulations which are or may be adopted by the FCC pursuant to
16 the FCC Order.

17 "d. Beginning no later than October 1, 2007, and no
18 later than each October 1 thereafter, each CMRS provider
19 wishing to participate in the payments provided in paragraph
20 c. for expenses related to the providing of Phase II Enhanced
21 911 Service shall certify to the board that it does not then
22 collect a cost-recovery or other similar separate charge from
23 its customers. CMRS providers failing to provide such
24 certification by October 1 shall be ineligible to receive such
25 payments for any such Phase II expenses incurred until such
26 certificate is provided to the board. Any CMRS provider
27 electing to collect cost-recovery or other similar separate

1 charges at any time following its October 1 certification
2 shall immediately notify the board and shall be ineligible to
3 participate in the payments established in this subsection
4 until ceasing such collection from its customers and providing
5 the notice required herein. This requirement shall only apply
6 to payments for expenses related to the provision of Phase II
7 Enhanced 911 Services.

8 "e. In the event that there are wireless emergency
9 telephone services which cannot be efficiently performed at
10 the ECD level or there are expenses which cannot be properly
11 allocated at the ECD level, any ECD or CMRS provider may
12 submit invoices directly to the board and the board shall
13 determine the smallest practical unit basis for joint
14 implementation.

15 "(4) To obtain, pursuant to subdivision (5), from an
16 independent, third-party auditor retained by the board a copy
17 of the annual reports to the Department of Examiners of Public
18 Accounts no later than 120 days after the close of each fiscal
19 year, which shall provide an accounting for all CMRS service
20 charges deposited into the CMRS Fund during the preceding
21 fiscal year and all disbursements to ECDs during the preceding
22 fiscal year. The Department of Examiners of Public Accounts
23 shall conduct an annual audit of the expenditures of the board
24 from all CMRS service charges from the CMRS Fund.

25 "(5) To retain, upon majority vote of the members of
26 the board who are present and voting, an independent,
27 third-party auditor for the purposes of receiving,

1 maintaining, and verifying the accuracy of any and all
2 information, including all proprietary information, that is
3 required to be collected, or that may have been submitted to
4 the board by CMRS providers and ECDs, and the accuracy of the
5 collection of the CMRS service charge required to be
6 collected. An audit, if conducted pursuant to this
7 subdivision, shall be conducted pursuant to Chapter 2A of
8 Title 40.

9 "(6) To conduct a cost study on or before July 1,
10 1999, to be submitted to the Governor, the Lieutenant
11 Governor, and the Speaker of the House of Representatives for
12 the purpose of determining whether legislation should be
13 proposed during the 2000 Regular Session of the Alabama
14 Legislature to adjust the amount of the CMRS service charge to
15 reflect actual costs to be incurred by CMRS providers and ECDs
16 in order to comply with the wireless E-911 service
17 requirements established by the FCC Order and any rules and
18 regulations which are or may be adopted by the FCC pursuant to
19 the FCC Order.

20 "(7) To promulgate such rules and regulations as may
21 be necessary to effect the provisions of this section. As soon
22 after January 1, 2011, as practicable, the board shall
23 promulgate rules to provide for methods of collection and
24 remittance of the emergency telephone service charge that are
25 equitable, nondiscriminatory, and competitively neutral.

26 "(8) To make the determinations and disbursements as
27 provided by Section 11-98-8(c).

1 "(9) Neither the board nor any ECD shall require the
2 CMRS providers to select or to deploy particular commercial
3 solutions to meet the requirements of the FCC Order, provided
4 the solutions chosen are compatible with the operations of the
5 ECDs.

6 "(c) The CMRS service charge provided in subdivision
7 (b)(1) shall be the sole charge assessed to CMRS providers
8 relating to emergency telephone services.

9 "(d) The board shall serve without compensation,
10 provided, however, that members of the board shall be entitled
11 to be reimbursed for actual expenses and travel costs
12 associated with their service; provided, however, that such
13 reimbursements may not be made from service charges and shall
14 be paid from appropriations made by the Legislature for board
15 expenses.

16 "(e) Nothing in this chapter shall be construed to
17 constitute the regulation of the entry of or rates charged by
18 CMRS providers for any service or feature which they provide
19 to their CMRS service customers, or to prohibit a CMRS
20 provider from charging a CMRS service customer for any service
21 or feature provided to the customer.

22 "(f) Subsection (k) of Section 40-21-121 shall apply
23 to the CMRS emergency telephone service charge imposed in this
24 section.

25 "(g) The board shall be subject to the Alabama
26 Sunset Law under Chapter 20 of Title 41, shall be classified
27 an enumerated agency under Section 41-20-3, and shall

1 terminate on October 1, 2000, and every four years thereafter,
2 unless continued as therein provided. If continued, the board
3 shall be reviewed every four years thereafter and terminated
4 unless continued into law.

5 "(h) Nothing in this chapter shall be construed to
6 authorize the board to initiate lawsuits, file claims for
7 damages against any person or entity, or participate in other
8 state or federal legal or regulatory proceedings, except as
9 permitted by subsection (i).

10 "(i) Upon approval by a two-thirds vote of the
11 board, the board may request the Attorney General to commence
12 proceedings against any person or entity if necessary to
13 enforce the provisions of this chapter. The Attorney General
14 shall also defend the board with respect to any lawsuits or
15 legal actions filed against the board. Service charges may not
16 be used to pay the legal costs of any litigation or legal
17 representation involving the board. The board may make annual
18 requests to the Legislature for appropriations to cover board
19 legal expenses.

20 "(j) The board shall be attached to the Alabama
21 Public Service Commission for administrative purposes and
22 shall be subject to oversight and regulation by the
23 commission.

24 "§11-98-8.

25 "(a) Each CMRS provider shall act as a collection
26 agent for the CMRS Fund and shall collect the CMRS service
27 charges levied upon CMRS connections pursuant to Section

1 11-98-7(b) (1) from each CMRS connection to whom the CMRS
2 provider provides CMRS service and shall, not later than 60
3 days after the end of the calendar month in which such CMRS
4 service charges are collected, remit to the board the net CMRS
5 service charges collected after deducting the fee authorized
6 by subsection (b). Each billing provider shall list the CMRS
7 service charge as a separate entry on each bill which includes
8 a CMRS service charge.

9 "(b) Each CMRS provider shall be entitled to deduct
10 and retain from the CMRS service charges collected by the
11 provider during each calendar month an amount not to exceed
12 one percent of the gross aggregate amount of the CMRS service
13 charges collected as reimbursement for the costs incurred by
14 the provider in collecting, handling, and processing the CMRS
15 service charges.

16 ~~"(c) The board shall be entitled to retain from the~~
17 ~~CMRS service charges collected during each calendar month an~~
18 ~~amount not to exceed two percent of the gross aggregate amount~~
19 ~~of such CMRS service charges collected as reimbursement for~~
20 ~~the costs incurred by the board in administering this chapter,~~
21 ~~including, but not limited to, retaining and paying the~~
22 ~~independent, third-party auditor to review and disburse the~~
23 ~~cost recovery funds and to prepare the reports contemplated by~~
24 ~~this chapter, shall be paid from appropriations made by the~~
25 Legislature. Such costs may not be paid from emergency
26 telephone service charges.

1 "(d) The CMRS provider shall have no obligation to
2 take any legal action to enforce the collection of the CMRS
3 service charge. If a CMRS provider receives partial payment
4 for a monthly bill from a CMRS subscriber, the CMRS provider
5 shall apply the payment against the amount the CMRS subscriber
6 owes the CMRS provider first, and shall remit to the board the
7 lesser amount, if any, as shall result therefrom.

8 "(e) The charges and fees collected under this
9 section shall not be subject to taxes or charges levied on or
10 by the CMRS provider, nor shall the charges and fees be
11 considered revenue of the CMRS provider for any purposes. The
12 CMRS provider shall annually provide to the emergency
13 communications district management review board an accounting
14 of the amounts billed and collected and of the disposition of
15 the amounts.

16 "(f) State and local taxes do not apply to the CMRS
17 service charge. As soon after January 1, 2011, as is
18 practicable, the board shall adopt rules to ensure compliance
19 with this section.

20 "(g) If a CMRS provider collects, but fails to
21 remit, the CMRS service charges as provided herein or fails to
22 collect the CMRS service charges, the provider shall be
23 required to remit to the board the actual fees collected or
24 that should have been collected and interest on the fees not
25 remitted. The amount of the annual interest due shall be
26 determined in accordance with Section 40-1-44. The board may

1 seek the enforcement of this section in the Circuit Court of
2 Montgomery County.

3 "(h) The board shall treat as confidential the
4 remittance information submitted by a CMRS provider, including
5 the total dollar amount remitted, the number of service
6 charges remitted, or any other information that the board
7 could reasonably believe would reveal the number of CMRS
8 customers who are being serviced by a particular carrier or
9 any other proprietary information."

10 Section 2. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.